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Update on: The American Taxpayer Relief Act of 2012 (Finally!)

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The American Taxpayer Relief Act of 2012 (Finally!)

As Congress and the Administration finally appear to have reached a deal during the New Year holiday, one of my colleagues joked that they might call this latest law the Tax Planners Full Employment Act. While it may seem like an apt characterization for our industry, the cycle of passing legislation like this at the last possible minute every two years is not healthy for our economy, and may be even taking years away from your favorite tax planner's life! Here's to wishing that the two sides in Washington can actually put together a more lasting and stable economic environment with permanent tax reform.

In the meantime, we have summarized the most important provisions of The American Taxpayer Relief Act of 2012. As of January 1, 2013 the Act had been passed by both the Senate and the House and is awaiting the President's expected signature. As painful as the process was to watch, the parties did extend a number of provisions on a **permanent** basis which is good to see. However, there are a number of other provisions that continue to only be extended only temporarily. Details included here were obtained from the US Senate web page.

For ease of navigation, this summary is broken down as follows:

As always, if we can help you further understand how these many provisions impact you and/or your business please contact Paul Oliveira or any member of our Tax Services Group.

I) General Extensions

Permanent extension of 2001 tax relief

Permanently extend the 10% bracket. Under current law, the 10% individual income tax bracket expired at the end of 2012. Upon expiration, the lowest tax rate was to be 15%. The Act extends the 10% individual income tax bracket for taxable years beginning after December 31, 2012.

Permanently extend the 25%, 28%, and 33% income tax rates for certain taxpayers. Under current law, the 25%, 28%, 33%, and 35% individual income tax brackets expired at the end of 2012. Upon expiration, tax rates were to become 28%, 31%, 36%, and 39.6% respectively. The Act extends the 25%, 28%, 33% rates on income at or below $400,000 (individual filers), $425,000 (heads of households) and $450,000 (married filing jointly) for taxable years beginning after December 31, 2012.

Permanently repeal the Personal Exemption Phaseout for certain taxpayers. Personal exemptions allow a certain amount per person to be exempt from tax. Due to the Personal Exemption Phase-out ("PEP"), the exemptions are phased out for taxpayers with AGI above a certain level. The *Economic Growth and Tax Relief Reconciliation Act of 2001* (EGTRRA) repealed PEP for 2010. The *Tax Relief,Unemployment Insurance Reauthorization and Job Creation Act of 2010* (TRUIRJCA) extended the repeal through 2012. The Act extends the repeal of PEP on income at or below $250,000 (individual filers), $275,000 (heads of households) and $300,000 (married filing jointly) for taxable years beginning after December 31, 2012.

Permanently repeal the itemized deduction limitation for certain taxpayers. Generally, taxpayers itemize deductions if the total deductions are more than the standard deduction amount. Since 1991, the amount of itemized deductions that a taxpayer may claim has been reduced, to the extent the taxpayer's AGI is above a certain amount. The EGTRRA repealed this limitation on itemized deductions for 2010. The TRUIRJCA extended the repeal through 2012. The Act extends the repeal of this limitation on income at or below $250,000 (individual filers), $275,000 (heads of households) and $300,000 (married filing jointly) for taxable years beginning after December 31, 2012.

Permanently extend the 2001 modifications to the child tax credit. Generally, taxpayers with income below certain threshold amounts may claim the child tax credit to reduce federal income tax for each qualifying child under the age of 17. For 2012 the credit was $1,000 the amount that may be claimed as a refund was 15% of earnings above $10,000. The Act extends this provision for taxable years beginning after December 31, 2012.

Permanently extend marriage penalty relief. The Act extends the marriage penalty relief for the standard deduction, the 15% bracket, and the EITC for taxable years beginning after December 31, 2012.

Permanently extend Coverdell Accounts. Coverdell Education Savings Accounts are tax exempt savings accounts used to pay the higher education expenses of a designated beneficiary. The annual contribution amount applicable to 2012 was $2,000, with the definition of education expenses including elementary and secondary school expenses. The Act extends these provisions to Coverdell accounts for taxable years beginning after December 31, 2012.

Permanently extend the expanded exclusion for employer-provided educational assistance. An employee may exclude from gross income up to $5,250 for income and employment tax purposes per year of employer-provided education assistance. Prior to 2001, this incentive was temporary and only applied to undergraduate courses. The EGTRRA expanded this provision to graduate education and extended the provision for undergraduate and graduate education. The bill extends the changes to this provision for taxable years beginning after December 31, 2012.

Permanently extend the student loan interest deduction. Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses up to $2,500. For 2012, this benefit is subject to a phase-out for taxpayers with income between $55,000 to $70,000 ($110,000 and $140,000 for joint filers). While this deduction was scheduled to expire after 2012, the Act now extends the changes this provision for taxable years beginning after December 31, 2012.

Permanently extend the exclusion from income of amounts received under certain scholarship programs. Scholarships for qualified tuition and related expenses are excludible from income. Qualified tuition reductions for certain education provided to employees are also excluded. Generally, this exclusion does not apply to qualified scholarships or tuition reductions that represent payment for teaching, research, or other services. The National Health Service Corps Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program provide education awards to participants on the condition that the participants perform certain services. The EGTRRA allowed the scholarship exclusion to apply to these programs. The bill extends the changes to this provision for taxable years beginning after December 31, 2012.

Tax-exempt private activity bonds for qualified education facilities. Under current law, proceeds from private activity bonds issued by a state or local government qualify as tax-exempt if 95% or more of the net bond proceeds are used for a qualified purpose as defined by the Internal Revenue Code. The EGTRRA expanded the definition of a private activity for which tax-exempt bonds may be issued to include bonds for qualified public educational facilities. Bonds issued for qualified educational facilities are not counted against a state's private-activity volume cap. Instead, these bonds have their own volume capacity limit equal to the lesser of $10 per resident or $5 million. The Act extends the allowance to issue tax-exempt private activity bonds for public school facilities for taxable years beginning after December 31, 2012.

Permanently extend the dependent care credit. The dependent care credit allows a taxpayer a credit for an applicable percentage of child care expenses for children under 13 and disabled dependents. For 2012, the amount of eligible expenses was $3,000 for one child and $6,000 for two or more children. The applicable percentage of child care expenses that could be credited for 2012 was 35%. The Act extends these provisions for taxable years beginning after December 31, 2012.

Permanently extend the increased adoption tax credit and the adoption assistance programs exclusion. Taxpayers that adopt children can receive a tax credit for qualified adoption expenses. A taxpayer may also exclude from income adoption expenses paid by an employer. The EGTRRA increased the credit from $5,000 ($6,000 for a special needs child) to $10,000, and provided a $10,000 income exclusion for employer-assistance programs. The Patient Protection and Affordable Care Act of 2010 extended these benefits to 2011 and made the credit refundable. The Act extends for taxable years beginning after December 31, 2012, the increased adoption credit amount and the exclusion for employer-assistance programs as enacted in EGTRRA.

Permanently extend the credit for employer expenses for child care assistance. The EGTRRA provided employers with a credit of up to $150,000 for acquiring, constructing, rehabilitating or expanding property which is used for a child care facility. The Act extends this provision for taxable years beginning after December 31, 2012.

Permanent estate, gift and generation skipping transfer tax relief. The EGTRRA phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent and increased the gift tax exemption to $1 million for 2010. In 2010, the TRUIRJCA set the exemption at $5 million per person with a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount was indexed beginning in 2012. The Act makes permanent the indexed TRUIRJCA exclusion amount and indexes that amount for inflation going forward, but sets the top tax rate to 40 percent for estates of decedents dying after December 31, 2012.

Portability of unused exemption. The TRUIRJCA allowed the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse for estates of decedents dying after December 31, 2010 and before December 31 2012. The Act makes permanent this provision and is effective for estates for decedents dying after December 31, 2012.

Reunification. Prior to the EGTRRA, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The EGTRRA decoupled these systems. The TRUIRJCA reunified the estate and gift taxes. The Act permanently extends unification and is effective for gifts made after December 31, 2012.

Permanent extension of 2003 tax relief

Permanently extend the capital gains and dividend rates. Through 2012, the capital gains and dividend rates for taxpayers below the 25% bracket is equal to zero percent. For those in the 25% bracket and above, the capital gains and dividend rates were 15%. These rates were to expire at the end of 2012. Upon expiration, the rates for capital gains were to become 10% and 20%, respectively, and dividends were to be subject to the ordinary income rates. The Act extends the current capital gains and dividends rates on income at or below $400,000 (individual filers), $425,000 (heads of households) and $450,000 (married filing jointly) for taxable years beginning after December 31, 2012. For income in excess of $400,000 (individual filers), $425,000 (heads of households) and $450,000 (married filing jointly), the rate for both capital gains and dividends will be 20%.

Extension of 2009 tax relief

Temporarily extend the American Opportunity Tax Credit. *T*he American Opportunity Tax Credit is available for up to $2,500 of the cost of tuition and related expenses paid during the taxable year. Under this tax credit, taxpayers receive a tax credit based on 100% of the first $2,000 of tuition and related expenses (including course materials) paid during the taxable year and 25% of the next $2,000 of tuition and related expenses paid during the taxable year. Forty percent of the credit is refundable. This tax credit is subject to a phase-out for taxpayers with adjusted gross income in excess of $80,000 ($160,000 for married couples filing jointly). The Act extends the American Opportunity Tax Credit for five additional years, through 2017.

Permanent individual Alternative Minimum Tax (AMT) relief

Permanent AMT patch. Currently, a taxpayer receives an exemption of $33,750 (individuals) and $45,000 (married filing jointly) under the AMT. Current law also does not allow nonrefundable personal credits against the AMT. The Act increases the exemption amounts for 2012 to $50,600 (individuals) and $78,750 (married filing jointly) and indexes the exemption and phaseout amounts thereafter. The bill also allows the nonrefundable personal credits against the AMT. The bill is effective for taxable years beginning after December 31, 2011.

II) Individual Tax Extenders

***Deduction for certain expenses of elementary and secondary school teachers.** T*he Act extends for two years the $250 above-the-line tax deduction for teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and service), other equipment, and supplementary materials used by the educator in the classroom.

Mortgage Debt Relief. *Prior to enactment of the current Act*, taxpayers who have mortgage debt canceled or forgiven after 2012 may be required to pay taxes on that amount as taxable income. Under this provision, up to $2 million of forgiven debt is eligible to be excluded from income ($1 million if married filing separately) through tax year 2013. This provision was created in the Mortgage Debt Relief Act of 2007 to prevent the taxation of so-called "shadow income" from foreclosures and cancelled debts through 2010. It was extended through 2012 by the Emergency Economic Stabilization Act of 2008.

Parity for exclusion from income for employer-provided mass transit and parking benefits. This provision would extend through 2013 the increase in the monthly exclusion for employer-provided transit and vanpool benefits from $125 to $240, so that it would be the same as the exclusion for employer-provided parking benefits.

Premiums for mortgage insurance deductible as interest that is qualified residence interest. The provision extends the ability to deduct the cost of mortgage insurance on a qualified personal residence. The deduction is phased-out ratably by 10% for each $1,000 by which the taxpayer's AGI exceeds $100,000. Thus, the deduction is unavailable for a taxpayer with an AGI in excess of $110,000. The Act extends this provision for two additional years, through 2013.

Deduction for state and local general sales taxes. The Act extends for two years the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes.

Special rules for contributions of capital gain real property made for conservation purposes. The Act extends for two years the increased contribution limits and carryforward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes.

Above-the-line deduction for qualified tuition related expenses. The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) created an above-the-line tax deduction for qualified higher education expenses. The maximum deduction was $4,000 for taxpayers with AGI of $65,000 or less ($130,000 for joint returns) or $2,000 for taxpayers with AGI of $80,000 or less ($160,000 for joint returns). The Act extends the deduction to the end of 2013.

Tax-free distributions from individual retirement plan for charitable purposes. The Act extends for two years the provision that permits tax-free distributions to charity from an Individual Retirement Arrangement (IRA) held by someone age 70½ or older of up to $100,000 per taxpayer, per taxable year. The provision contains a transition rule under which an individual can make a rollover during January of 2013 and have it count as a 2012 rollover.

Also, individuals who took a distribution in December of 2012 will be able to contribute that amount to a charity and count as an eligible charitable rollover to the extent it otherwise meets the requirements for an eligible charitable rollover.

III) Business Tax Extenders

Tax credit for research and experimentation expenses. The Act extends for two years, through 2013, the research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year and provides an alternative simplified credit of 14 percent. The Act also modifies rules for taxpayers under common control and rules for computing the credit when a portion of a trade or business changes hands.

9% Credit Rate Freeze for the Low-Income Housing Tax Credit Program. The low-income housing tax credit program provides a tax credit over a period of ten years after the housing facility is placed-in service. The credit provided each year is determined by present-value formula based on the federal cost of borrowing. Over the past few years, as the federal cost of borrowing has declined, so has the amount of tax credits that can be used to build a LIHTC project. To deal with this, in 2008, Congress adjusted the formula and set a minimum credit amount of 9%, which is based on the original credit rate when the program was created. The provision is effective for facilities placed-in-service before December 31, 2013. This Act would extend the expiration date by changing the deadline to projects that have received an allocation before January 1, 2014.

Indian employment tax credit. The Act extends for two years, through 2013, the business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The amount of the credit is 20 percent of the excess of wages and health insurance costs paid to qualified employees (up to $20,000 per employee) in the current year over the amount paid in 1993.

New Markets Tax Credit. Through the New Markets Tax Credit (NMTC) program, the federal government is able to leverage federal tax credits to encourage significant private investment in businesses in low-income communities. The program provides a 39 percent tax credit spread over 7 years. The Act extends for two years the new markets tax credit, permitting a maximum annual amount of qualified equity investments of $3.5 billion each year.

Employer wage credit for activated military reservists. The Act extends for two years, through 2013, the provision that provides eligible small business employers with a credit against the employer's income tax liability for a taxable year in an amount equal to 20 percent of the sum of differential wage payments to activated military reservists.

Work opportunity tax credit. The Act extends for two years, through 2013, the provision that allows businesses to claim a work opportunity tax credit equal to 40 percent of the first $6,000 of wages paid to new hires of one of eight targeted groups. These groups include members of families receiving benefits under the Temporary Assistance to Needy Families (TANF) program, qualified ex-felons, designated community residents, vocational rehabilitation referrals, qualified summer youth employees, qualified food and nutrition recipients, qualified SSI recipients, and long-term family assistance recipients.

Returning Heroes and Wounded Warriors Work Opportunity Tax Credits. Through 2012, businesses are allowed to claim a work opportunity tax credit (WOTC) for hiring qualified veterans in the following targeted groups and up to the following credit amounts:

- Veterans in a family receiving supplemental nutrition assistance: $2,400
- Short-term unemployed veterans: $2,400
- Service-related disabled veterans discharged from active duty within a year: $4,800
- Long-term unemployed veterans: $5,600
- Long-term unemployed service-related disabled veterans: $9,600

A credit against Social Security taxes is also available to tax-exempt employers. Transfers are made from general revenues to make the Social Security trust fund whole. This provision was due to expire on December 31, 2012. The Act would extend these credits for an additional year, though 2013.

Qualified zone academy bonds (QZABs) - allocation of bond limitation. QZABs are a form of tax credit bond which offer the holder a Federal tax credit instead of interest. QZABs can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy. In general, a qualified zone academy is any public school (or academic program within a public school) below college level that is located in an empowerment zone or enterprise community and is designed to cooperate with businesses to enhance the academic curriculum and increase graduation and employment rates. The Act extends the QZAB program for 2012 and 2013 providing $400 million in bond volume per year.

15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements. The Act extends for two years, through 2013, the temporary 15-year cost recovery period for certain leasehold, restaurant, and retail improvements, and new restaurant buildings, which are placed in service before January 1, 2014. The extension is effective for qualified property placed in service after December 31, 2011.

Accelerated depreciation for business property on Indian reservation. The Act extends for two years, through 2013, the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person.

Enhanced charitable deduction for contributions of food inventory. The Act extends for two years the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory.

Temporarily extend increase in the maximum amount and phase-out threshold under section 179. Under current law, a taxpayer with a sufficiently small amount of annual investment may elect to deduct the cost of certain property placed in service for the year rather than depreciate those costs over time. The 2003 tax cuts temporarily increased the maximum dollar amount that may be deducted from $25,000 to $100,000. The tax cuts also increased the phase-out amount from $200,000 to $400,000.

These amounts have been further modified and extended several times on a temporary basis, increasing up to a high of $500,000 and $2 million respectively for taxable years beginning in 2010 and 2011, and then to $125,000 and $500,000 respectively for taxable years beginning in 2012, before reverting to the permanent amounts of $25,000 and $200,000 respectively for taxable years beginning in 2013 and thereafter. The modified proposal would increase the maximum amount and phase-out threshold in 2012 and 2013 to the levels in effect in 2010 and 2011 ($500,000 and $2 million respectively).

Within those thresholds, the Act would also allow a taxpayer to expense up to $250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. This provision expires at the end of 2013 and the amounts revert to $25,000 and $200,000, respectively.

Special expensing rules for certain film and television productions. The Act extends for two years, through 2013, the provision that allows film and television producers to expense the first $15 million of production costs incurred in the United States ($20 million if the costs are incurred in economically depressed areas in the United States).

Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico. The Act extends for two years the provision extending the section 199 domestic production activities deduction to activities in Puerto Rico.

Modification of tax treatment of certain payments to controlling exempt organizations. In general, interest, rent, royalties, and annuities paid to a tax–exempt organization from a controlled entity are treated as unrelated business income of the tax-exempt organization. The Pension Protection Act (PPA) provided that if a payment to a tax-exempt organization by a controlled entity is no more than fair market value, then the payment is excludable from the tax-exempt organization’s unrelated business income. The Act extends the provision two years to the end of 2013.

Treatment of certain dividends of regulated investment companies (RIC's). The Act extends a provision allowing a RIC, under certain circumstances, to designate all or a portion of a dividend as an “interest-related dividend,” by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442 of the Code. The proposal extends the treatment of interest-related dividends and short-term capital gain dividends received from a RIC to taxable years of the RIC beginning before January 1, 2014.

RIC qualified investment entity treatment under FIRPTA. The Act extends the inclusion of a RIC within the definition of a "qualified investment entity" under section 897 of the Tax Code through December 31, 2013.

Exceptions under subpart F for active financing income. The U.S. parent of a foreign subsidiary engaged in a banking, financing, or similar business is eligible for deferral of tax on such subsidiary's earnings if the subsidiary is predominantly engaged in such business and conducts substantial activity with respect to such business. The subsidiary must pass an entity level income test to demonstrate that the income is active income and not passive income. The Act extends the provision to the end of 2013.

Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules. The Act allows deferral for certain payments (interest, dividends, rents and royalties) between commonly controlled foreign corporations (CFC). This provision allows U.S. taxpayers to deploy capital from one CFC to another without triggering U.S. tax. The Act extends present law to the end of 2013. The provision is effective for tax years beginning after December 31, 2011.

Special rules for qualified small business stock. Generally, non-corporate taxpayers may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. For stock acquired after February 17, 2009 and on or before September 27, 2010, the exclusion is increased to 75 percent. For stock acquired after September 27, 2010 and before January 1, 2012, the exclusion is 100 percent and the AMT preference item attributable for the sale is eliminated.

Qualifying small business stock is from a C corporation whose gross assets do not exceed $50 million (including the proceeds received from the issuance of the stock) and who meets a specific active business requirement. The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or $10 million of gain from stock in that corporation. The Act extends the 100 percent exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2014 and held for more than five years. The relevant provision also clarifies that in the case of stock acquired after February 17, 2009, and before January 1, 2014, the date of acquisition for purposes of determining the percentage exclusion is the date the holding period for the stock begins.

Basis adjustment to stock of S corporations making charitable contributions of property. The Act extends for two years the provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions would exceed such shareholder's adjusted basis in the S corporation.

Reduction in S corporation recognition period for built-in gains tax. If a taxable corporation converts into an S corporation, the conversion is not a taxable event. However, following such a conversion, an S corporation must hold its assets for a certain period in order to avoid a tax on any built-in gains that existed at the time of the conversion. The American Recovery and Reinvestment Act reduced that period from 10 years to 7 years for sales of assets in 2009 and 2010. The Small Business Jobs Act reduced that period to 5 years for sales of assets in 2011. The Act extends the reduced 5-year holding period for sales occurring in 2012 and 2013. In addition, this provision clarifies rules for carryforwards and installment sales.

Empowerment zone tax incentives. The Act extends for two years the designation of certain economically depressed census tracts as Empowerment Zones. Businesses and individual residents within Empowerment Zones are eligible for special tax incentives.

Bonus depreciation. Under current law, businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. For 2008 through 2010, Congress allowed businesses to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property.

The TRUIRJCA expanded this provision to allow 100 percent bonus depreciation for investments placed in service after September 8, 2010 and before 2012 and 50 percent bonus depreciation for investments placed in service during 2012. The Act would extend the current 50 percent expensing provision for qualifying property purchased and placed in service before January 1, 2014 (before January 1, 2015 for certain longer-lived and transportation assets) and also allow taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation.

The Act also decouples bonus deprecation from allocation of contract costs under the percentage of completion accounting method rules for assets with a depreciable life of seven years or less that are placed in service in 2013. For regulated utilities, the provision clarifies that it is a violation of the normalization rules to assume a bonus depreciation benefit for ratemaking purposes when a utility has elected not to take bonus depreciation.

IV) Energy Tax Extenders

Credit for certain nonbusiness energy property (25C). The Act extends for two years, through 2013, the credit under Section 25C of the Code for energy-efficient improvements to existing homes, reinstating the credit as it existed before passage of the American Recovery and Reinvestment Act. Standards for property eligible under 25C are updated to reflect improvements in energy efficiency. The provision also updates the energy efficiency requirements from the 2003 International Energy Conservation Code to the 2006 International Energy Conservation Code.

Extension and modification of incentives for renewable electricity property wind production tax credit and modification of other renewable energy credits. Under current law, taxpayers can claim a 2.2 cent per kilowatt hour tax credit for wind electricity produced for a 10-year period from a wind facility placed-in-service by the end of 2012 (the wind production tax credit). The Act extends through 2013 the production tax credit for wind. The provision also modifies section 45 to allow renewable energy facilities that begin construction before the end of 2013 to claim the 10-year credit, and amends section 45 to clarify that commonly recycled paper is excluded from qualifying from the production tax credit.

Investment tax credit in lieu of production tax credit. Under current law, facilities that produce electricity from solar facilities are eligible to take a thirty percent (30%) investment tax credit in the year that the facility is placed-in-service. Facilities that produce electricity from wind, closed-loop biomass, open-loop biomass, geothermal, small irrigation, hydropower, landfill gas, waste-to-energy, and marine renewable facilities are eligible for a production tax credit for electricity produced over a ten-year period.

The investment tax credit is better for small and offshore wind facilities. The Act would allow facilities qualifying for the production tax credit to elect to take the investment tax credit in lieu of the production tax credit for facilities that begin construction by the end of 2013.

Credit for construction of new energy efficient homes. The Act extends for two years, through 2013, the credit for the construction of energy-efficient new homes that achieve a 30% or 50% reduction in heating and cooling energy consumption relative to a comparable dwelling constructed per the standards of the 2003 International Energy Conservation Code (including supplements).

Credit for energy efficient appliances. The Act extends for two years, through 2013, the tax credit for US-based manufacturers of energy-efficient clothes washers, dishwashers and refrigerators.

If you have any questions regarding The American Taxpayer Relief Act of 2012, please contact Paul Oliveira or any member of our Tax Services Team.

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