Parker's Quick Recap of the American Taxpayer Relief Act of 2012

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Introduction

In the waning hours of January 1, Congress passed the American Taxpayer Relief Act (ATRA) of 2012 as part of an effort to resolve the fiscal cliff dilemma. ATRA permanently extends the lower tax rates on individuals with income of $400,000 or less, heads of households with income of $425,000 or less, and married taxpayers with incomes of $450,000 or less. ATRA also increases the alternative minimum tax exemption amounts for 2012 to $50,600 (individuals), $78,750 (married filing jointly and surviving spouse), and $39,375 (married filing separately), and indexes the exemption and phaseout amounts thereafter. The following is a summary of the more important provisions of the new law. H.R. 8 (January 1, 2013)

General Extensions

Tax Rates

Under prior law, the 10 percent individual income tax bracket expired at the end of 2012. Beginning in 2013, the lowest tax rate was scheduled to increase to 15 percent. ATRA, Sec. 101, permanently extends the 10 percent individual income tax bracket for tax years beginning after December 31, 2012.

Prior to ATRA, the 25, 28, 33, and 35 percent individual income tax brackets were scheduled to expire at the end of 2012. Upon expiration, those rates were scheduled to increase to 28, 31, 36, and 39.6 percent, respectively. ATRA, Sec. 101, 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 tax years beginning after December 31, 2012. Individuals with incomes above these amounts are subject, depending on their income, to tax rates of 35 and 39.6 percent.

See Parker Tax ¶19,100.

Permanent Extension of the Capital Gains and Dividend Rates

Prior to ATRA, the capital gains and dividend rates for taxpayers below the 25 percent bracket was equal to zero percent. For those in the 25 percent bracket and above, the capital gains and dividend rates were 15 percent. These rates expired at the end of 2012. Upon expiration, the rates for capital gains were scheduled to become 10 percent and 20 percent, respectively, and dividends were scheduled to be taxed at ordinary income rates. ATRA, Sec. 102(b), 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 tax 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 is 20 percent.

In addition, effective for tax years beginning after December 31, 2012, the accumulated earnings tax is 20 percent and the personal holding company tax is also 20 percent.

Permanent Repeal of Personal Exemption Phaseout for Most 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 adjusted gross income (AGI) above a certain level. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) repealed the PEP for 2010. The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (TRUIRJCA) extended the repeal through 2012. ATRA, Sec. 101, permanently extends the repeal of the PEP on incomes at or below $250,000 (individual filers), $275,000 (heads of households) and $300,000 (married filing jointly) for tax years beginning after December 31, 2012.

See Parker Tax ¶10,705.

Permanent Repeal of Pease Limitation for Most Taxpayers

Generally, taxpayers itemize deductions if their total deductions are more than the standard deduction amount. Since 1991, the amount of itemized deductions a taxpayer may claim has been reduced, to the extent the taxpayer's AGI is above a certain amount. This limitation is generally known as the "Pease limitation." EGTRRA repealed the Pease limitation on itemized deductions for 2010. TRUIRJCA extended the repeal through 2012. ATRA, Sec. 101, permanently extends the repeal of the Pease limitation on incomes at or below $250,000 (individual filers), $275,000 (heads of households) and $300,000 (married filing jointly) for tax years beginning after December 31, 2012.

See Parker Tax ¶82,125.

Modifications to Estate Tax; Portability Made Permanent

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, 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. ATRA, Sec. 101(c), 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.

In addition, 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. ATRA makes permanent this provision and is effective for estates for decedents dying after December 31, 2012.

Prior to 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. EGTRRA decoupled these systems. The TRUIRJCA reunified the estate and gift taxes. ATRA permanently extends unification and is effective for gifts made after December 31, 2012.

Extension of 2009 Tax Relief

(1) ATRA, Sec. 103(a), extended the American Opportunity tax credit for five years through 2018. See Parker Tax ¶101,115.

(2) ATRA, Sec. 103(b), makes the child tax credit permanent and permanently extends certain modifications relating to the additional child tax credit. See Parker Tax ¶100,701.

(3) ATRA, Sec. 103(c), extends for five additional years, through 2017, the 2009 expansions that increased the earned income tax credit for families with three or more children and increased the phase-out range for all married couples filing a joint return. See Parker Tax ¶102,101.

(4) ATRA, Sec. 103(d), permanently extends the rule disregarding refunds in the administration of federal programs and federally assisted programs.

(5) ATRA, Sec. 101, permanently extends marriage penalty relief for the standard deduction, the 15 percent bracket, and the earned income tax credit for tax years beginning after December 31, 2012.

Permanent AMT Relief

Prior to ATRA, AMT exemptions for 2013 were scheduled to be $33,750 (individuals), $45,000 (married filing jointly and surviving spouse), and $22,500 (married filing separately), with nonrefundable personal credits not being allowed to reduce AMT. ATRA, Sec. 104, increases the exemption amounts for 2012 to $50,600 (individuals), $78,750 (married filing jointly), and $39,375 (married filing separately). The exemptions continue to phaseout for alternative minimum taxable income over certain amounts. ATRA indexes the exemption and phaseout amounts for years after 2012. The new law also allows the nonrefundable personal credits to reduce AMT.

See Parker Tax ¶12,120.

Individual Extenders

Deduction for Certain Expenses of Elementary and Secondary School Teachers

Elementary and secondary school teachers can deduct from gross income up to $250 of qualified expenses they paid during the year. If spouses are filing jointly and both were eligible educators, the maximum deduction on the joint return is $500. However, neither spouse can deduct more than $250 of his or her qualified expenses. The deduction expired for tax years beginning after 2011. ATRA, Sec. 201, extends the deduction through tax years beginning before 2014.

See Parker Tax ¶80,135.

Exclusion from Gross Income of Discharge of Qualified Principal Residence Indebtedness

Income from the discharge of qualified principal residence indebtedness is generally excludable from gross income. This exclusion was scheduled to expire for debt discharged after December 31, 2012. ATRA, Sec. 202, extends the exclusion to debt that is discharged before January 1, 2014.

See Parker Tax ¶76,125.

Parity for Employer-Provided Mass Transit and Parking Benefits

The value of the qualified transportation benefits provided by an employer to an employee is excludable from the employee's gross income to the extent the value does not exceed certain dollar limitations. Excludable transportation benefits include (1) transportation in a commuter highway vehicle between home and work; (2) transit passes; (3) qualified parking; and (4) qualified bicycle commuting reimbursements. Before February 17, 2009, the amount that could be excluded as qualified transportation fringe benefits was limited to $100 a month in combined transit pass and vanpool benefits and $175 a month in qualified parking benefits. These limits are adjusted annually for inflation, using 1998 as the base year.

The American Recovery and Reinvestment Act of 2009 provided parity in qualified transportation fringe benefits by temporarily increasing the monthly exclusion for combined employer-provided transit pass and vanpool benefits to the same level as the exclusion for employer-provided parking, effective for months beginning on or after February 17, 2009, and before January 1, 2011. TRUIRJCA extended this parity through December 31, 2011. The parity in qualified transportation fringe benefits expired January 1, 2012, so that effective January 1, 2012, the amount that could be excluded as qualified transportation fringe benefits was limited to $125 a month in combined transit pass and vanpool benefits and $240 a month in qualified parking benefits. ATRA, Sec. 203, extends the parity in qualified transportation fringe benefits through December 31, 2013. Thus, for 2012, the monthly limit on the exclusion for combined transit pass and vanpool benefits is $240.

See Parker Tax ¶76,125.

Mortgage Insurance Premiums Treated as Qualified Residence Interest

Taxpayers can treat amounts paid during the year for qualified mortgage insurance as qualified residence interest. To qualify for this treatment, the insurance must be in connection with acquisition debt for a qualified residence, and the insurance contract must have been issued after 2006. The treatment of qualified mortgage insurance as qualified residence interest was to expire for amounts paid or accrued after December 31, 2011, or for amounts properly allocable to any period after that date. ATRA, Sec. 204, extends this treatment to amounts paid or accrued before January 1, 2014 (and not properly allocable to any period after 2013).

See Parker Tax ¶83,515.

State and Local General Sales Taxes Deduction

Taxpayers can elect to deduct state and local general sales taxes, instead of state and local income taxes, as an itemized deduction on Schedule A (Form 1040), Itemized Deductions. This election was to expire for tax years beginning after December 31, 2011. ATRA, Sec. 205 extends the availability of the election to tax years beginning before January 1, 2014.

See Parker Tax ¶83,130.

Contributions of Capital Gain Real Property Made for Conservation Purposes

An individual taxpayer's deduction for qualified conservation contributions is generally limited to 50 percent of the taxpayer's adjusted gross income (AGI), minus the taxpayer's deduction for all other charitable contributions. This special percentage limitation was to expire for contributions made in tax years beginning after December 31, 2011. ATRA, Sec. 206(a) extends the availability of the special percentage limitation to contributions made in tax years beginning before January 1, 2014.

A qualified conservation contribution (1) that is made by a corporation that is a qualified farmer or rancher and whose stock is not readily tradable on an established securities market and (2) that is a contribution of property that is used in agriculture or livestock production and that is subject to a restriction that the property remain available for such production, is allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under the general limit for corporations. This special rule was to expire for contributions made in tax years beginning after December 31, 2011. ATRA, Sec. 206(b), extends the availability of the special rule to contributions made in tax years beginning before January 1, 2014.

See Parker Tax ¶84,180.

Above-the-Line Deduction for Qualified Tuition and Related Expenses

Taxpayers with modified adjusted gross income within certain limits may deduct up to $4,000 of qualified education expenses paid during the year for themselves, their spouses, or their dependents. The maximum deduction is $4,000 for an individual whose adjusted gross income for the tax year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for other individuals whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). This deduction was to expire for tax years beginning after December 31, 2011. ATRA, Sec. 207 extends the availability of the deduction to tax years beginning before January 1, 2014.

See Parker Tax ¶80,145.

Tax-Free Distributions from Individual Retirement Plans for Charitable Purposes

A qualified charitable distribution from an individual's IRA is excluded from the individual's gross income. This exclusion was to expire for distributions made in tax years beginning after December 31, 2011. ATRA, Sec. 208 extends the availability of the exclusion to distributions made in tax years beginning after December 31, 2011, and before January 1, 2014.

For purposes of Code Secs. 408(a)(6), (b)(3), and (d)(8), at the taxpayer's election, (1) any qualified charitable distribution made after December 31, 2012, and before February 1, 2013, will be deemed to have been made on December 31, 2012, and (2) any portion of a distribution from an IRA to the taxpayer after November 30, 2012, and before January 1, 2013, may be treated as a qualified charitable distribution to the extent (1) such portion is transferred in cash after the distribution to an organization described in Code Sec. 408(d)(8)(B)(i) before February 1, 2013, and (2) such portion is part of a distribution that would meet the requirements of Code Sec. 408(d)(8) but for the fact that the distribution was not transferred directly to such an organization.

See Parker Tax ¶134,560.

Business Tax Extenders

Extension and Modification of Bonus Depreciation

For 2008 through 2010, businesses could take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property. 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. ATRA, Sec. 331, extends 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 allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation. This provision 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.

See Parker Tax ¶94,120.

Code Sec. 179 Expensing Amounts

For tax years beginning in 2010 and 2011, a taxpayer could elect to deduct up to $500,000 for Code Sec. 179 property. For tax years beginning in 2012, that amount was reduced to $139,000 and for tax years beginning after 2012, $25,000 was the maximum amount that could be expensed. ATRA, Sec. 315, extends the amounts deductible by a taxpayer for 2010 and 2011 under Code Sec. 179 to 2012 and 2013. Similarly, all limitations that applied to 2010 and 2011 now apply for 2012 and 2013. Thus, taxpayers can deduct up to $500,000 of Code Sec. 179 property for tax years beginning in 2012 and 2013, assuming all the other applicable requirements are met.

The amount deductible under Code Sec. 179 is reduced if the cost of the Code Sec. 179 property placed in service by the taxpayer during the year exceeds a certain threshold amount. For 2010 and 2011, the threshold amounts were $2,000,000. For 2012 and 2013, the threshold amounts were scheduled to be $560,000 and $200,000, respectively. ATRA, Sec. 315, increased the threshold amounts to $2,000,000 for both 2012 and 2013.

The special rule allowing off-the-shelf computer software to be subject to Code Sec. 179 expensing was scheduled to expire for such software placed in service after 2012. ATRA, Sec. 315, extended the expensing of such software for another year. Thus, off-the-shelf software placed in service in 2013 is subject to the Code Sec. 179 expensing election.

For tax years 2003 through 2014, the Code Sec. 179 election can be made, revoked, or changed on an amended return without IRS consent. For tax years before 2003 and after 2014, IRS consent is required to revoke or change an election.

See Parker Tax ¶94,701.

Election to Expense Mine Safety Equipment

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property placed in service before 2012 as an expense that is not chargeable to capital account. Any cost so treated is allowed as a deduction for the tax year in which the qualified advanced mine safety equipment property is placed in service. ATRA, Sec. 316, extended the expensing election for such property to property placed in service before 2014.

Extension of 15-year Straight-line Cost Recovery for Qualified Leasehold Improvements, Qualified Restaurant Buildings and Improvements, and Qualified Retail Improvements

Qualified leasehold improvement, qualified restaurant buildings and improvements, and qualified retail improvements placed in service before January 1, 2012, were subject to special rules. Taxpayers could recover the cost of such assets over a 15-year period rather than the longer 39-year period they would otherwise be required to use. ATRA, Sec. 311, has extended these special rules for two years to apply to property placed in service on or before December 31, 2013.

See Parker Tax ¶94,315.

Seven-Year Recovery Period for Motorsports Entertainment Complexes

A special seven-year cost recovery period applied to certain motorsports entertainment complex property placed in service before January 1, 2012. ATRA, Sec. 312, extended these special rules for two years to apply to property placed in service on or before December 31, 2013.

See Parker Tax ¶94,315.

Accelerated Depreciation for Business Property on an Indian Reservation

Special rules allowed for more accelerated cost recovery for qualified Indian reservation property. The accelerated cost recovery for such property expired for property placed in service after December 31, 2011. ATRA, Sec. 312, extended the accelerated cost recover for another two years.

Enhanced Charitable Deduction for Contributions of Food Inventory

Special rules apply to certain donations of food inventory made to a qualified organization before January 1, 2012. Under these special rules, the amount of the required reduction is generally equal to only one-half of the amount of gain that would not have been long-term capital gain if the taxpayer had sold the property at its fair market value on the date of its contribution, excluding, however, any amount treated as ordinary income under recapture rules. If the amount of the charitable contribution that remains after this reduction exceeds twice the basis of the contributed property, then the amount of the charitable contribution is reduced a second time to an amount equal to twice the amount of the basis of the property.

ATRA, Sec. 314, extended these rules to apply to donations made before January 1, 2014.

See Parker Tax ¶84,145.

Extension and Modification of Research Credit

Taxpayers are allowed a credit for certain research expenses paid or incurred in a trade or business. Generally, the research credit is allowed for increasing research activities. The credit had expired for amounts paid or incurred after December 31, 2011. ATRA, Sec. 301, provides that this provision now expires for amounts paid or incurred after December 31, 2013.

In addition, changes were made to the rules relating to the aggregation of expenditures for controlled groups and businesses under common control as well as the rules relating to adjustments for certain acquisitions.

See Parker Tax ¶104,900.

Indian Employment Tax Credit

ATRA, Sec. 304, extended the Indian employment tax credit, which had expired for tax years beginning after December 31, 2011, through tax years beginning before January 1, 2014.

See Parker Tax ¶105,701.

New Markets Tax Credit

ATRA, Sec. 305, extended the new markets credit through 2013 and allows a carryover of the credit through 2018. The credit limitation for 2012 and 2013 is $3.5 billion.

See Parker Tax ¶106,201.

Railroad Track Maintenance Credit

ATRA, Sec. 306, extended the railroad track maintenance credit, which was scheduled to expire for tax years beginning after December 31, 2011, to tax years beginning before January 1, 2014.

See Parker Tax ¶106,701.

Mine Rescue Team Training Credit

Certain mining businesses are allowed a credit for a percentage of the training program costs paid or incurred to train qualified mine rescue team employees. The credit had expired for costs paid or incurred after 2011. ATRA, Sec. 307, extended the credit through 2013.

Employer Wage Credit for Employees Who Are Active Duty Service Members

Certain small business employers that make differential wage payments to employees who are members of the military are allowed a credit for a percentage of the eligible differential wage payments made to each qualified employee. The credit had expired for payments made after December 31, 2011. ATRA, Sec. 308, extended the credit. It now expires for payments made after December 31, 2013.

See Parker Tax ¶108,601.

Work Opportunity Credit

The work opportunity credit allows employers a 40 percent credit for qualified first-year wages paid or incurred during the tax year to individuals who are members of a targeted group of employees. The credit had generally terminated for amounts paid or incurred for employees who began work for an employer after December 31, 2011. ATRA, Sec. 309, extended the credit, and it now terminates for amounts paid or incurred for employees who begin work for an employer after December 31, 2013.

See Parker Tax ¶104,501.

Special Expensing Rules for Certain Film and Television Productions

An owner of any film or television production beginning before 2012 that the owner reasonably expects will be, upon completion, a qualified film or television production could elect to treat production costs paid or incurred by that owner, subject to certain limits, as a deductible expense for the tax year in which the costs are paid (for an owner who uses the cash receipts and disbursements method of accounting) or incurred (for an owner who uses an accrual method of accounting). The deduction is subject to recapture if the owner's expectations are later determined to be inaccurate. ATRA, Sec. 317, extended this expensing rule to apply to any film or television productions beginning before 2014.

See Parker Tax ¶95,601.

Temporary Exclusion of 100 Percent of Gain on Certain Small Business Stock

A taxpayer other than a corporation may exclude 50 percent (60 percent for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years. The amount of gain eligible for the exclusion by an individual with respect to any corporation is the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million (reduced by the amount of gain eligible for exclusion in prior years). To qualify as a small business, when the stock is issued, the aggregate gross assets held by the corporation may not exceed $50 million. The corporation also must meet certain active trade or business requirements.

The portion of the gain includible in taxable income is taxed at a maximum rate of 28 percent under the regular tax. A percentage of the excluded gain is an alternative minimum tax preference; the portion of the gain includible in alternative minimum taxable income is taxed at a maximum rate of 28 percent under the alternative minimum tax.

For stock issued after February 17, 2009, and before September 28, 2010, the percentage exclusion for qualified small business stock sold by an individual is increased to 75 percent. As a result of the increased exclusion, gain from the sale of qualified small business stock to which the provision applies is taxed at maximum effective rates of 7 percent under the regular tax and 12.88 percent under the AMT. For stock issued after September 27, 2010, and before January 1, 2012, the percentage exclusion for qualified small business stock sold by an individual is

increased to 100 percent, and the minimum tax preference does not apply.

ATRA, Sec. 324, extends the 100-percent exclusion and the exception from minimum tax preference treatment for two years (i.e., for stock acquired before January 1, 2014). The provision clarifies that in the case of any 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.

See Parker Tax ¶116,165.

Sec. 199 Deduction for Certain Domestic Production Activities in Puerto Rico

The Code Sec. 199 domestic production activities deduction was available for certain domestic production activities in Puerto Rico, but only with respect to the first six tax years of the taxpayer beginning after December 31, 2005, and before January 1, 2012. ATRA, Sec. 318, expands this provision to provide that the deduction is available for certain domestic production activities in Puerto Rico with respect to the first eight tax years of the taxpayer beginning after December 31, 2005, and before January 1, 2014.

See Parker Tax ¶96,110.

Basis Adjustment to Stock of S Corps Making Charitable Contributions of Property

The Pension Protection Act of 2006 amended Code Sec. 1367(a)(2) to provide that the decrease in shareholder basis under Code Sec. 1367(a)(2)(B) by reason of a charitable contribution of property is equal to the shareholder's pro rata share of the adjusted basis of such property. This rule expired for contributions made in tax years beginning after December 31, 2011. ATRA, Sec. 325, extended the rule for another two years. Thus, the rule applies for contributions made in tax years beginning before January 1, 2014. For contributions made in tax years beginning after December 31, 2013, the amount of the reduction is the shareholder's pro rata share of the fair market value of the contributed property.

See Parker Tax ¶31,960.

Reduction in S Corp Recognition Period for Built-in Gains Tax

Under Code Sec. 1374, a corporate-level tax, at the highest marginal rate applicable to corporations is imposed on an S corporation's net recognized built-in gain that arose before the conversion of the C corporation to an S corporation and is recognized by the S corporation during the recognition period, i.e., the 10-year period beginning with the first day of the first tax year for which the S election is in effect. If the taxable income of the S corporation is less than the amount of net recognized built-in gain in the year the built-in gain is recognized (for example, because of post-conversion losses), no tax under Code Sec. 1374 is imposed on the excess of the built-in gain over taxable income for that year. However the untaxed excess of net recognized built-in gain over taxable income for that year is treated as recognized built-in gain in

the succeeding tax year. Regulations provide that if a corporation sells an asset before or during the recognition period and reports the income from the sale using the installment method under Code Sec. 453 during or after the recognition period, that income is subject to tax under Code Sec. 1374.

Under a temporary rule, for any tax year beginning in 2009 and 2010, no tax was imposed on an S corporation under Code Sec. 1374 if the seventh tax year in the corporation's recognition period preceded that tax year. Thus, with respect to gain that arose before the conversion of a C corporation to an S corporation, for tax years beginning in 2009 and 2010, no tax was imposed under Code Sec. 1374 after the seventh tax year the S corporation election was in effect. For any tax year beginning in 2011, a similar rule applied, substituting five years for seven years. The built-in gains tax also applies to gains with respect to net recognized built-in gain attributable to any asset received by an S corporation from a C corporation in a transaction in which the S corporation's basis in the asset is determined (in whole or in part) by reference to the basis of the asset (or other property) in the hands of the C corporation. In the case of built-in gain attributable to an asset received by an S corporation from a C corporation in such a transaction, the recognition period rules are applied by substituting the date the asset was acquired by the S corporation in lieu of the beginning of the first tax year for which the corporation was an S corporation. The amount of the built-in gains tax under Code Sec. 1374 is treated as a loss taken into account by the shareholders in computing their individual income tax.

ATRA, Sec. 326, provides that for dispositions of property in tax years beginning in 2012 and 2013, for purposes of computing the built-in gains tax, the term "recognition period" is applied by substituting a five-year period for the 10-year period. As a result, the recognition period is the five-year period beginning with the first day of the first tax year for which the corporation was an S corporation (or beginning with the date of acquisition of assets if the rules applicable to assets acquired from a C corporation apply). Thus, in the case of a C corporation that elects S status, if property is disposed of in a tax year beginning in 2012 or 2013 more than five years after the first day of the first tax year the corporation was an S corporation, gain or loss on the disposition will not be taken into account in computing the net recognized built-in gain.

A technical amendment, addressing the temporary period of the new rule, provides that the rule requiring the excess of net recognized built-in gain over taxable income for a tax year to be carried forward and treated as recognized built-in gain in the succeeding tax year applies only to gain recognized within the recognition period. Thus, for example, built-in gain recognized in a tax year beginning in 2013, from a disposition in that year that occurs beyond the end of the temporary five-year recognition period, is not carried forward under the income limitation rule and treated as recognized built-in gain in the tax year beginning in 2014 (after the temporary provision has expired and the recognition period is again 10 years).

This new rules also provide that if an S corporation sells an asset and reports the income from the sale using the installment method, the treatment of all payments received are governed by the provisions applicable to the tax year in which such sale was made.

See Parker Tax ¶31,785.

Miscellaneous Other Business Changes

The following other business tax changes were made by ATRA:

(1) Extension of temporary minimum low-income tax credit rate for nonfederally subsidized new buildings;

(2) Extension of housing allowance exclusion for determining area median gross income for qualified residential rental project exempt facility bonds;

(3) Extension of qualified zone academy bonds;

(4) Extension of modification of tax treatment of certain payments to controlling exempt organizations;

(5) Extension of treatment of certain dividends of regulated investment companies;

(6) Extension of RIC qualified investment entity treatment under FIRPTA;

(7) Extension of Subpart F exception for active financing income;

(8) Extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules;

(9) Extension of tax-exempt financing for New York Liberty Zone;

(10 Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands; and

(11) Modification and extension of American Samoa economic development credit

(12) Extension 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.

(13) Extension through 2013 the time for issuing New York Liberty Zone bonds effective for bonds issued after December 31, 2009.

Energy Extenders

Credit for Energy-Efficient Existing Homes

A taxpayer is allowed a 10-percent nonbusiness energy property credit for the purchase of qualified energy efficiency improvements to existing homes. Additionally, a taxpayer can claim specified credits for the purchase of specific energy efficient property originally placed in service by the taxpayer during the tax year. There is a limitation of $500 on the total amount of

nonbusiness energy property credit that may be claimed. This limitation is a lifetime limitation, not an annual limitation. There are also dollar limitations on the amount of the credit that may be claimed for specific types of qualified energy efficiency improvements and residential energy property. This credit was to expire with respect to any property placed in service after December 31, 2011. ATRA, Sec. 401, extends the availability of the credit to property placed in service before January 1, 2014.

See Parker Tax ¶101,505.

Credit for Alternative Fuel Vehicle Refueling Property

A taxpayer who buys certain refueling property for alternative fuel vehicles is generally allowed a credit for 30 percent of the cost of such property. The credit is limited to a certain dollar amount, which depends on whether the property is used for business or personal purposes. The amount of the credit for business-use property is limited to $30,000. The amount of the credit for personal-use property is limited to $1,000. In the case of property relating to hydrogen, this credit is to expire for property placed in service after December 31, 2014. In the case of any other property, the credit was to expire for property placed in service after December 31, 2011. In the case of such other (non-hydrogen) property, ATRA, Sec. 402, extends the availability of the credit to property placed in service before January 1, 2014.

See Parker Tax ¶101,715.

Extension of Credit for Two- or Three-Wheeled Plug-in Electric Vehicles

ATRA, Sec. 403, reforms and extends for two years, through 2013, the individual income tax credit for highway-capable plug-in motorcycles and three-wheeled vehicles.

Generally, for such vehicles, a credit is allowed for the tax year in an amount equal to the sum of the “applicable amount” with respect to each of the qualified two- or three-wheeled plug-in electric vehicles placed in service by the taxpayer during the tax year, and the amount of the credit allowed under this provision is treated as a credit allowed under Code Sec. 30D(a). The applicable amount is an amount equal to the lesser of 10 percent of the cost of the vehicle, or $2,500. For this purpose, a qualified two- or three-wheeled plug-in electric vehicle’ is any vehicle that (1) has two or three wheels, (2) meets the requirements of Code Secs. 30D(d)(1)(A), (B), (C), (E), and (F) (determined by substituting ‘2.5 kilowatt hours’ for ‘4 kilowatt hours’ in Code Sec. 30D(d)(1)(F)(i)), (3) is manufactured primarily for use on public streets, roads, and highways, (4) is capable of achieving a speed of at least 45 miles an hour, and (5) is acquired after December 31, 2011, and before January 1, 2014. This provision replaces a 10 percent tax credit that expired at the end of 2011 for plug-in electric motorcycles, three-wheeled vehicles and low-speed vehicles. Thus it repeals the ability for golf carts and other low-speed vehicles to qualify for the credit.

See Parker Tax ¶101,701.

Extension and Modification of Cellulosic Biofuel Producer Credit

The cellulosic biofuel producer credit is $1.01 for each gallon of cellulosic biofuel that is produced by a taxpayer and that is (1) sold to another person for use in the production of a qualified cellulosic biofuel mixture in a trade or business, for use as a fuel in a trade or business, or for sale at retail and placement in the fuel tank of the retail buyer; or (2) used and sold for one of the purposes mentioned in (1). The credit was to apply only with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013. ATRA, Sec. 404 extends the credit to apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2014.

Also, cellulosic biofuel is redefined to include algae-based fuel for fuels sold or used after the date of the enactment of ATRA. In addition, for algae-based fuel, qualified cellulosic biofuel production is expanded to include fuel derived from algae that is sold by the taxpayer to another person for refining by such other person into a fuel that meets the registration requirements for fuels and fuel additives under section 211 of the Clean Air Act. Thus, algae-based fuel sold for further refining, not just as end use as a fuel, would qualify for the credit.

See Parker Tax ¶104,725.

Incentives for Biodiesel and Renewable Diesel

A credit is allowed for certain biodiesel or renewable diesel used or sold as fuel in a trade or business. The components to this biodiesel fuels credit are (1) the biodiesel credit, (2) the biodiesel mixture credit, and (3) the small agri-biodiesel producer credit. The biodiesel fuels credit was to expire for any sale or use after December 31, 2011. ATRA, Sec. 405, extends the credit so that it is now scheduled to expire for any sale or use after December 31, 2013. ATRA makes corresponding changes to Code Sec. 6426(c)(6) (relating to the excise tax credit for biodiesel mixtures) and Code Sec. 6427(e)(6)(B), applicable to fuel sold or used after December 31, 2011.

See Parker Tax ¶106,801.

Incentives for Renewable Electricity Property Wind Production Tax Credit and 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). ATRA, Sec. 407, extends through 2013 the production tax credit for wind. The provision also modifies Code Sec. 45 to allow renewable energy facilities that begin construction before the end of 2013 to claim the 10-year credit, and amends Code Sec. 45 to clarify that commonly recycled paper is excluded from qualifying from the production tax credit.

Credit for Construction of New Energy Efficient Homes

Certain contractors are allowed a credit for constructed or manufactured qualifying energy efficient homes in the year such homes are sold or leased to other persons for use as a residence. The amount of this energy efficient home credit is $2,000 or $1,000, depending on whether the home is constructed or manufactured and on the energy saving standards satisfied. The credit expired for qualified new energy efficient homes sold or leased after December 31, 2011. ATRA, Sec. 408, extends for two years, through 2013, the credit for the construction of energy-efficient new homes that achieve a 30 percent or 50 percent 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).

See Parker Tax ¶107,801.

Extension of Credit for Energy Efficient Appliances

Manufacturers of energy efficient dishwashers, clothes washers, and refrigerators are allowed a credit equal to the sum of the credit amounts figured separately for each type of appliance produced during the calendar year ending with or within its tax year. The credit expired for appliances manufactured after 2011. ATRA, Sec. 409, extends for two years, through 2013, the tax credit for U.S.-based manufacturers of energy-efficient clothes washers, dishwashers and refrigerators.

See Parker Tax ¶107,901.

Cellulosic Biofuels Bonus Depreciation

Facilities producing cellulosic biofuel can expense 50 percent of their eligible capital costs in the first year for facilities placed-in-service by the end of 2012. ATRA, Sec. 410, extends this bonus depreciation for one additional year for facilities placed-in-service before the end of 2013. The proposal also expands the definition of qualified cellulosic biofuel production to include algae-based fuel.

Miscellaneous Other Energy Provisions

The following are some other energy tax provisions in ATRA:

(1) an extension of the production credit for Indian coal facilities placed in service before 2009;

(2) an extension of a special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities; and

(3) an extension of the alternative fuels excise tax credit.

Unemployment Provisions

ATRA, Sec. 501, extends for one year the availability of benefits in all tiers of Federal Emergency Unemployment Compensation. In addition, ATRA Sec. 502, continues for one year the extended benefits program with a three-year look-back.

ATRA, Sec. 503, continues reassessments of unemployment eligibility for the long-term unemployed, preventing needless overpayments while ensuring that individuals receive the benefits they have earned. Further, the provision continues reemployment services to individuals in order to get people back to work more quickly.

ATRA, Sec. 504, provides for a continuation of unemployment benefits for railroad workers for one year.