

## State-Level Taxability of American Recovery and Reinvestment Tax Act of 2009

### Section 1603 Grants for Specified Energy Property

(as of January 21, 2010)

#### *Internal Revenue Code Section 48(d)(3) excludes ARRA Section 1603 grants from federal gross income*

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Tax Jurisdiction	Taxable	Nontaxable	Notes
Alabama		X Note 1	AL currently conforms to IRC which assumes includes ARRA § 1603 [AL Code § 40-18-1.1(b)]
Alaska		X Note 1	AK currently conforms to IRC which assumes includes ARRA § 1603 [AK Stat. §§ 43.20.021(a); 43.20.300(a)]
Arizona	X Note 2		AZ conformity with IRC currently fixed at 1/1/09 and ARRA enacted 2/17/09 [AZ Rev. Stat. Ann. § 43-105(A)]
Arkansas	X		AR does not adopt the entire IRC by reference but adopts different IRC provisions with different adoption dates; the latest being 1/1/09 for any one provision; therefore, AR has not adopted the changes made by ARRA § 1603 [See generally, AR Code Ann. § 26-51-402, et. seq.]
California	X Note 2		CA conformity with IRC currently fixed at 1/1/05 and ARRA enacted 2/17/09 [CA Rev. & Tax. Cd. §§ 17024.5(a)(1); 23051.5(a)(1)]
Colorado		X Note 1	CO conforms to IRC of 1986, as amended currently, and other provisions of Federal tax law that may become effective at any time or from time to time during the tax year which assumes includes ARRA § 1603 [CO Rev. Stat. § 39-22-103(5.3)]
Connecticut		X Note 1	CT conforms to IRC of 1986, as amended, as it stands in effect on the last day of the income year which assumes includes ARRA § 1603 [CT Gen. Stat. § 12-213(a)(23)]
Delaware		X Note 1	DE currently conforms to IRC of 1986, as amended, which assumes includes ARRA § 1603; net income is based on federal taxable income [DE Code Ann. 30 §§ 1903(a); 1901(10)] accordingly, IRC § 48(d)(3) is not in force in DE
District of Columbia		X Note 1	DC automatically conforms with IRC; decoupled from the COD provisions of the ARRA but nothing to indicate that it has decoupled from the entire ARRA [DC Code Ann. §§ 47-1801.04(28A); 47-1803.02(A)(2)(Y)]
Florida		X Note 1	FL conforms to the IRC as of 1/1/09 but also includes all amendments to the IRC, which assumes includes ARRA § 1603 [FL Stat. §§ 220.03(1)(n); 220.03(4)]
Georgia	X Note 2		GA conformity with IRC currently fixed at 1/1/09 and ARRA enacted 2/17/09 [GA Code Ann. § 48-1-2(14); Federal Tax Changes And How They Affect 2008 Returns, 04/13/09]
Hawaii	X Note 2		HI conformity with IRC currently fixed at 12/31/08 and ARRA enacted 2/17/09 [HI Rev. Stat. §§ 235-2.5(c); 235-2.3(a)]
Idaho		X Note 1	ID retroactively currently conforms to IRC as of 1/1/09 effective 2/17/09 which assumes includes ARRA § 1603 [ID Code § 63-3004(a)]
Illinois		X Note 1	IL currently conforms to IRC which assumes includes ARRA § 1603 [ILCS Ch. 35 § 5/1501(a)(11); Ill. Constitution Art. IX sec. 3(b)]
Indiana		X Note 1	IN retroactively currently conforms to IRC as of 1/1/09 effective 2/17/09 which assumes includes ARRA § 1603 [IN Stat. § 6-3-1-11]
Iowa	X Note 2		IA adopted the IRC of 1986 as in effect on 1/1/08, applicable retroactively to 1/1/07, for tax years beginning on or after that date [IA Code §§ 422.3(5); 422.32(7)]
Kansas		X Note 1	Starting point for computing KS corporate income tax is federal taxable [KS Stat. Ann. § 79-32,138(a)]; any reference to IRC means the provisions of the IRC of 1986, as amended [KS Stat. Ann. § 79-32,109(a)]
Kentucky	X Note 2		KY conformity with IRC currently fixed at 12/31/06 and ARRA enacted 2/17/09 [KY Rev. Stat. Ann. § 141.010(3)]
Louisiana		X Note 1	LA incorporates by reference the IRC of 1986, as currently in effect, except as otherwise provided, and applicable federal regulations which assumes includes ARRA § 1603 [LA Rev. Stat. Ann. § 47:287.701]
Maine		X Note 1	ME conforms to IRC of 1986 and amendments as of 2/17/09 [ME Rev. Stat. Ann. 36 § 111(1-A)]
Maryland		X Note 1	MD is coupled to any amendment of the IRC provided for in the ARRA unless it has specifically decoupled from an amendment by statute, which it has not for ARRA § 1603 [H.B. 101, Ch. 487, § 24, Budget Reconciliation and Financing Act of 2009, signed into law 5/19/09]
Massachusetts		X Note 1	"Code" means the IRC, as amended and in effect for the taxable year, except as otherwise provided [MA Gen. L. Ch. 63 § 1]

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Michigan		X Note 1	As used in the Michigan Business Tax, IRC means IRC of 1986 in effect on 1/1/08 or, at the option of the taxpayer, in effect for the tax year [MI Comp. Laws Ann. § 208.1111(3)]
Minnesota		X Note 1	MN conforms to IRC of 1986 as amended through 3/31/09 [MN Stat. § 290.01, Subd. 31]
Mississippi	X Note 2		MS does not have a conformity law; it applies the current IRC to the extent that MS law incorporates them by reference; nothing in MS law specifically enacts ARRA § 1603 [MS Code Ann. § 27-7-1 et. seq.]
Missouri		X Note 1	MO currently conforms to the IRC and amendments; any term used in MO income tax law has the same meaning as the IRC or other federal law relating to income taxes unless a different meaning is clearly required in MO income tax law [MO Rev. Stat. § 143.091]
Montana		X Note 1	MT currently conforms to IRC which assumes includes ARRA § 1603 [MT Stat. § 15-31-113(1)]
Nebraska		X Note 1	NE currently conforms to IRC which assumes includes ARRA § 1603 [NE Rev. Stat. § 77-2714]
Nevada			no state income tax
New Hampshire	X Note 2		NH incorporates the IRC in effect on 12/31/00 in computing gross business profits; however, the IRC does not extend to the rules, regulations, forms, and procedures of the IRS, although the rules, regulations, forms, and procedures may be used by NH in formulating rules for adoption [NH RSA § 77-A:1(XX)]
New Jersey		X Note 1	A corporate entity's net income, for purposes of the Corporation Business Tax, is based on federal taxable income, without NOLs and other special deductions and subject to certain modifications [NJ Rev. Stat. § 54:10A-4(k); NJ Admin. Code § 18:7-5.1(b)]
New Mexico		X Note 1	NM currently conforms to IRC of 1986, as amended, which assumes includes ARRA § 1603 [NM NMSA 1978 § 7-2A-2(G)]
New York		X Note 1	The primary base of NY corporation franchise tax is entire net income; the starting-point for determining entire net income is the taxpayer's federal taxable income [NY Tax Law §§ 209; 208(9)]
North Carolina		X Note 1	NC currently conforms to IRC enacted as of 5/1/09 [NC Gen. Stat. §§ 105-228.90(b)(1b); 105-130.2(5c)]
North Dakota		X Note 1	ND currently conforms to IRC of 1986, as amended, which assumes includes ARRA § 1603 [ND Cent. Code §§ 57-38-01(5); (12)]
Ohio (Franchise Tax)		X Note 1	OH currently conforms to IRC of 1986 enacted as of 10/16/09 [OH Rev. Code Ann. §§ 5733.04(G); 5733.04(J); 5701.11]
Ohio (Commercial Activity Tax)	X Note 2		Likely taxable for Commercial Activity Tax (gross receipts tax) [OH Rev. Code Ann. § 5751.01(F)]
Oklahoma		X Note 1	OK currently conforms to IRC of 1986, as amended, effective for the tax year to which the current law applies, which assumes includes ARRA § 1603 [OK Stat. 68 § 2353(2)]
Oregon		X Note 1	Effective 1/1/10 and applicable to tax years beginning on or after 1/1/09, IRC, except where the legislature has provided otherwise, means the IRC as amended and in effect on 5/1/09 [OR Rev. Stat. § 317.010(7); effective 1/1/11, there is a continuing tie—a "rolling reconnect" to the federal definition of taxable income [OR Rev. Stat. § 317.018(1)]
Pennsylvania		X Note 1	Starting point for the computation of PA taxable income is federal taxable income [PA Stat. § 7401(3)(a); Reg. § 153.11]
Rhode Island		X Note 1	RI conforms with IRC which assumes includes ARRA § 1603 [RI Gen. Laws § 44-11-11]
South Carolina	X Note 2		SC conformity with IRC currently fixed at 12/31/08 and ARRA enacted 2/17/09 [SC Code Ann. § 12-6-40(A)(1)(a)]
South Dakota			no state income tax
Tennessee		X Note 1	TN automatically conforms with IRC [TN Code Ann. § 67-4-2006]
Texas		X Note 1	Starting point is gross receipts from Federal income return; there appears to be no addback for ARRA § 1603 grants [TX Tax Code Ann. § 171.1011]
Utah		X Note 1	UT currently conforms to IRC which assumes includes ARRA § 1603 [UT Code Ann. § 59-7-101 (19); UT Admin. R. R865-6F-14(A)]
Vermont	X Note 2		VT conformity with IRC currently fixed at 12/31/08 and ARRA enacted 2/17/09 [VT Stat. Ann. § 5824]
Virginia	X Note 2		VA conformity with IRC currently fixed at 12/31/08 and ARRA enacted 2/17/09; VA General Assembly expected to address fixed-date conformity during 2010 session [VA Tax Bulletin 09-1]
Washington (Business and Occupation Tax)	X		Likely taxable for Business and Occupation Tax (gross receipts tax) [WA R.S. Code § 82.040.80]; awaiting Washington State Housing Finance Commission verification

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West Virginia		X Note 1	WV conforms to the IRC as of 2/18/09 which assumes includes ARRA § 1603 [WV Code §§ 11-24-3(a); 11-24-3(c)]
Wisconsin	X Note 2		WI conformity with IRC currently fixed at 12/31/08 and ARRA enacted 2/17/09 [WI Stats § 71.22(4)(um); Dept. Rev. Tax Pub. 162, 07/01/09]
Wyoming			no state income tax

**Important Notes:**

- 1 A "Nontaxable" determination in states that conform to Federal is dependent upon the IRS position that ARRA § 1603 Grants are not taxable under Internal Revenue Code Section 48(d)(3).
- 2 States that are not in conformity with the Internal Revenue Code, as amended, as of February 17, 2009 (the date of enactment of the American Recovery and Reinvestment Act, Section 1603 Grant for Specified Energy Property) are considered to be taxable unless future state legislation is passed.