WENDY'S/ARBY'S GROUP, INC.
Form 10-Q
November 05, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 27, 2009

OR

( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ______________ to _______________

Commission file number: 1-2207

WENDY'S/ARBY'S GROUP, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	38-0471180 (I.R.S. Employer Identification No.)
1155 Perimeter Center West, Atlanta, GA (Address of principal executive offices)	30338 (Zip Code)

(678) 514-4100
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes [X] No [ ]

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes [ ] No [ ]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of “accelerated filer, large accelerated filer, and smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer [ ] Accelerated filer [X] Non-accelerated filer [ ] Smaller reporting company [ ]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes [ ] No [X]

There were 463,003,194 shares of the registrant’s Common Stock outstanding as of October 30, 2009.

PART I. FINANCIAL INFORMATION
Item 1. Financial Statements.

WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands)

	September 27, 2009 (Unaudited)	December 28, 2008
ASSETS		
Current assets:		
Cash and cash equivalents	$ 644,646	$ 90,090
Restricted cash equivalents	986	20,792
Accounts and notes receivable	86,870	97,258
Inventories	21,991	24,646
Prepaid expenses and other current assets	38,911	28,990
Deferred income tax benefit	45,333	37,923
Advertising fund restricted assets	81,622	81,139
Total current assets	920,359	380,838
Restricted cash equivalents	6,732	34,032
Notes receivable	34,080	34,608
Investments	110,121	133,052
Properties	1,667,384	1,770,372
Goodwill	878,322	853,775
Other intangible assets	1,398,530	1,411,473
Deferred costs and other assets	52,778	27,470
Total assets	$ 5,068,306	$ 4,645,620
LIABILITIES AND EQUITY		
Current liabilities:		
Current portion of long-term debt	$ 17,489	$ 30,426
Accounts payable	88,038	139,340
Accrued expenses and other current liabilities	267,766	247,334
Advertising fund restricted liabilities	81,622	81,139
Liabilities related to discontinued operations	3,539	4,250
Total current liabilities	458,454	502,489
Long-term debt	1,507,857	1,081,151
Deferred income	29,367	16,859
Deferred income taxes	496,237	475,243
Other liabilities	176,885	186,433
Commitments and contingencies		
Equity:		
Common stock	47,148	47,042
Additional paid-in capital	2,757,197	2,753,141
Accumulated deficit	(359,983)	(357,541)
Common stock held in treasury	(31,946)	(15,944)
Accumulated other comprehensive loss	(12,910)	(43,253)

		2,399,506		2,383,445
Total liabilities and equity	$	5,068,306	$	4,645,620

See accompanying notes to unaudited condensed consolidated financial statements.

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WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands Except Per Share Amounts)

	Three Months Ended		Nine Months Ended	
	September 27, 2009	September 28, 2008	September 27, 2009	September 28, 2008
		(Unaudited)		
Revenues:				
Sales	$ 806,038	$ 287,641	$ 2,395,476	$ 860,560
Franchise revenues	97,183	22,730	284,416	65,679
	903,221	310,371	2,679,892	926,239
Costs and expenses:				
Cost of sales	684,071	239,880	2,046,475	718,317
General and administrative	97,909	36,075	320,533	123,108
Depreciation and amortization	47,020	16,497	143,369	48,766
Impairment of long-lived assets	15,528	14,204	31,108	15,621
Facilities relocation and corporate restructuring	1,725	(82)	8,899	812
Other operating expense (income), net	146	-	2,245	(487)
	846,399	306,574	2,552,629	906,137
Operating profit	56,822	3,797	127,263	20,102
Interest expense	(36,457)	(13,585)	(89,671)	(41,020)
Investment income (expense), net	737	6,724	(3,850)	3,189
Other than temporary losses on investments	-	(8,100)	(3,916)	(79,686)
Other income (expense), net	1,319	736	303	(2,619)
Income (loss) from continuing operations before income taxes	22,421	(10,428)	30,129	(100,034)
(Provision for) benefit from income taxes	(8,155)	(2,938)	(11,895)	12,292
Income (loss) from continuing operations	14,266	(13,366)	18,234	(87,742)
Income from discontinued operations, net of income taxes	422	1,219	422	1,219
Net income (loss)	$ 14,688	$ (12,147)	$ 18,656	$ (86,523)
Basic and diluted income (loss) per share:				
Continuing operations:				
Common stock (A)	$ .03	$ (.14)	$ .04	$ (.95)
Class B common stock	N/A	(.14)	N/A	(.95)
Discontinued operations:				
Common stock (A)	$ -	$ .01	$ -	$ .01
Class B common stock	N/A	.01	N/A	.01
Net income (loss):				
Common stock (A)	$ .03	$ (.13)	$ .04	$ (.94)
Class B common stock	N/A	(.13)	N/A	(.94)

Dividends declared per share:				
Common stock (A)	$ .015	$ .08	$ .045	$ .24
Class B common stock	N/A	.08	N/A	.26

(A) In connection with the May 28, 2009 amendment and restatement of our Certificate of Incorporation, our former Class A common stock is now referred to as Common Stock.

See accompanying notes to unaudited condensed consolidated financial statements.

WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Nine Months Ended September 27, 2009	September 28, 2008
	(Unaudited)	
Cash flows from continuing operating activities:		
Net income (loss)	$ 18,656	$ (86,523)
Adjustments to reconcile net income (loss) to net cash provided by continuing operating activities:		
Depreciation and amortization	143,369	48,766
Impairment of long-lived assets	31,108	15,621
Write-off and amortization of deferred financing costs	13,915	7,281
Net receipt of deferred vendor incentive	13,016	3,743
Share-based compensation provision	11,654	3,932
Non-cash rent expense	9,907	(139)
Distributions received from joint venture	7,106	-
Non-cash operating investment adjustments, net (see below)	2,673	78,259
Deferred income tax benefit, net	(300)	(13,466)
Income from discontinued operations	(422)	(1,219)
Other, net	1,756	2,245
Changes in operating assets and liabilities, net	(1,137)	(16,044)
Net cash provided by continuing operating activities	251,301	42,456
Cash flows from continuing investing activities:		
Capital expenditures	(65,280)	(58,401)
Investment activities, net (see below)	36,756	34,205
Proceeds from dispositions	9,386	690
Cost of Wendy's Merger	-	(7,543)
Cost of acquisitions, less cash acquired	(664)	(9,540)
Other, net	2,968	(391)
Net cash used in continuing investing activities	(16,834)	(40,980)
Cash flows from continuing financing activities:		
Proceeds from long-term debt	556,006	53,668
Repayments of long-term debt	(154,427)	(89,313)
Deferred financing costs	(37,976)	-
Repurchases of common stock	(25,244)	-
Dividends	(21,088)	(16,101)
Other, net	1,685	(1,144)
Net cash provided by (used in) continuing financing activities	318,956	(52,890)
Net cash provided by (used in) continuing operations before effect of exchange rate changes on cash	553,423	(51,414)
Effect of exchange rate changes on cash	1,671	-
Net cash provided by (used in) continuing operations	555,094	(51,414)

Net cash used in operating activities of discontinued operations	(538)	(670)
Net increase (decrease) in cash and cash equivalents	554,556	(52,084)
Cash and cash equivalents at beginning of period	90,090	78,116
Cash and cash equivalents at end of period	$ 644,646	$ 26,032

See accompanying notes to unaudited condensed consolidated financial statements.

WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Nine Months Ended September 27, 2009	Nine Months Ended September 28, 2008
	(Unaudited)	
Detail of cash flows related to investments:		
Operating investment adjustments, net:		
Other than temporary losses on investments	$ 3,916	$ 79,686
Other net recognized gains	(1,243)	(1,427)
	$ 2,673	$ 78,259
Investment activities, net:		
Proceeds from sales of available-for-sale securities and other investments	$ 29,663	$ 75,373
Decrease in restricted cash held for investment	26,681	40,454
Payments to cover short positions in securities and cost of available-for-sale securities and other investments purchased	(19,588)	(81,622)
	$ 36,756	$ 34,205
Supplemental disclosures of cash flow information:		
Cash paid during the period in continuing operations for:		
Interest	$ 53,110	$ 37,692
Income taxes, net of refunds	$ 9,999	$ 2,944
Supplemental schedule of non-cash investing and financing activities:		
Total capital expenditures	$ 70,990	$ 66,039
Cash capital expenditures	(65,280)	(58,401)
Non-cash capitalized lease and certain sales-leaseback transactions	$ 5,710	$ 7,638

See accompanying notes to unaudited condensed consolidated financial statements.

WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands Except Per Share Amounts)

(1) Basis of Presentation

The accompanying unaudited condensed consolidated financial statements (the "Financial Statements") of Wendy's/Arby's Group, Inc. ("Wendy's/Arby's" or "Wendy's/Arby's Group" and, together with its subsidiaries, the "Compar "we", "us" or "our") have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and, therefore, do not include all information and footnotes required by GAAP for complete financial statements. In our opinion, however, the Financial Statements contain all adjustments necessary to present fairly our financial position as of September 27, 2009 and results of our operations for the three months and nine months ended September 27, 2009 and September 28, 2008 and our cash flows for the nine months ended September 27, 2009 and September 28, 2008. The results of operations for the three months and nine months ended September 27, 2009 are not necessarily indicative of the results to be expected for the full 2009 fiscal year. These Financial Statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 28, 2008 (the "Form 10-K"). In addition, in preparing the Financial Statements, we have reviewed and considered all significant events occurring subsequent to September 27, 2009 and up until November 5, 2009, the date of the issuance of the Financial Statements.

On September 29, 2008 (the "Closing Date"), we completed the merger (the "Wendy's Merger") with Wendy's International Inc. ("Wendy's") and, as such, Wendy's results of operations have been consolidated in our financial statements since the Closing Date.

We report on a fiscal year consisting of 52 or 53 weeks ending on the Sunday closest to December 31. All three-month periods presented contain 13 weeks and all nine-month periods presented contain 39 weeks. Because our 2009 fiscal year, ending on January 3, 2010, will contain 53 weeks, our fourth quarter will contain 14 weeks. All references to years and quarters relate to fiscal periods rather than calendar periods.

(2) Acquisitions and Dispositions

Merger with Wendy's International, Inc.

On September 29, 2008, we completed the Wendy's Merger. Immediately prior to the Wendy's Merger, each share of our Class B Common Stock was converted into Class A Common Stock on a one for one basis (the "Conversion"). As a result of the Wendy's Merger, the accounts of Wendy's® are included for the three and nine months ended September 27, 2009, but have not been included for the three and nine months ended September 28, 2008.

The total merger consideration of $2,515,521 has been allocated to Wendy's net tangible and intangible assets acquired and liabilities assumed based on their fair values with the excess recognized as goodwill. During the nine months ended September 27, 2009, the preliminary allocation to goodwill of $845,631 at December 28, 2008 was impacted primarily by changes in the fair values of assets acquired and liabilities assumed and the finalization of the deferred income tax liability related to the Wendy's Merger as follows:

Goodwill as reported at December 28, 2008	$845,631
Change in total merger consideration:	
Decrease in the value of Wendy's stock options that have been converted into Wendy's/Arby's options	(199)

Increase in Wendy’s Merger costs	325
Changes to fair values of assets and liabilities and deferred income tax liability related to the merger:	
Increase in investments	(683)
Increase in properties	(2,738)
Increase in favorable leases	(5,170)
Decrease in computer software	6
Decrease in accrued expenses and other current liabilities	(3,585)
Increase in other liabilities	15,196
Increase in unfavorable leases	6,709
Increase in deferred income tax liability	7,143
Goodwill as reported at September 27, 2009	$862,635

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands Except Per Share Amounts)

Other acquisitions

We completed the acquisitions of the operating assets, and assumed liabilities, of 45 Arby's® franchised restaurants during the nine months ended September 28, 2008. The total then estimated consideration for the acquisitions was $15,807 consisting of (1) $8,890 of cash (before consideration of $45 of cash acquired), (2) the assumption of $6,239 of debt and (3) $678 of related estimated expenses. The aggregate purchase price of $16,294 also included $693 of losses from the settlement of unfavorable franchise rights and a $1,180 gain on the termination of subleases both included in "Other operating expense (income), net" in the accompanying unaudited condensed consolidated statement of operations.

Dispositions

During the nine months ended September 27, 2009, the Company received proceeds from dispositions of $9,386 consisting of $3,384 from the sale of ten Wendy's units to a franchisee and $6,002 related to other dispositions. These sales resulted in a net loss of $556 which is included in "Depreciation and amortization".

(3) Debt

Senior Notes

On June 23, 2009, Wendy's/Arby's Restaurants, LLC ("Wendy's/Arby's Restaurants"), a direct wholly-owned subsidiary of Wendy's/Arby's, issued $565,000 principal amount of Senior Notes (the "Senior Notes"). The Senior Notes will mature on July 15, 2016 and accrue interest at 10.00% per annum, payable semi-annually on January 15 and July 15, with the first payment on January 15, 2010. The Senior Notes were issued at 97.533% of the principal amount, representing a yield to maturity of 10.50% and resulting in net proceeds paid to us of $551,061. The $13,939 discount is being accreted and the related charge included in interest expense until the Senior Notes mature. The Senior Notes are fully and unconditionally guaranteed, jointly and severally, on an unsecured basis by certain direct and indirect domestic subsidiaries of Wendy's/Arby's Restaurants (collectively, the "Guarantors").

Wendy's/Arby's Restaurants incurred approximately $21,105 in costs related to the issuance of the Senior Notes which are being amortized to interest expense over the Senior Notes' term utilizing the effective interest method.

An Indenture dated as of June 23, 2009 (the "Indenture") among Wendy's/Arby's Restaurants, the Guarantors and U.S. Bank National Association, as trustee (the "Trustee"), includes certain customary covenants that, subject to a number of important exceptions and qualifications, limit the ability of Wendy's/Arby's Restaurants and its restricted subsidiaries to, among other things, incur debt or issue preferred or disqualified stock, pay dividends on equity interests, redeem or repurchase equity interests or prepay or repurchase subordinated debt, make some types of investments and sell assets, incur certain liens, engage in transactions with affiliates (except on an arms-length basis), and consolidate, merge or sell all or substantially all of their assets. The covenants generally do not restrict Wendy's/Arby's Group or any of its subsidiaries that are not subsidiaries of Wendy's/Arby's Restaurants.

Senior Secured Term Loan

On June 10, 2009, Wendy's/Arby's Restaurants entered into an Amendment No. 1 to the amended and restated Arby's Credit Agreement (as so amended, the "Credit Agreement") which, among other things (1) permitted the issuance by

Wendy's/Arby's Restaurants of the Senior Notes described above and the incurrence of debt thereunder, and permitted Wendy's/Arby's Restaurants to dividend to Wendy's/Arby's the net cash proceeds of the Senior Notes issuance less amounts used to prepay the senior secured term loan under the Credit Agreement and pay accrued interest thereon and certain other payments, (2) modified certain total leverage financial covenants, added certain financial covenants based on senior secured leverage ratios and modified the minimum interest coverage ratio, (3) permitted the prepayment at any time prior to maturity of certain senior notes of Wendy's and eliminated certain incremental debt baskets in the covenant prohibiting the incurrence of

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(In Thousands Except Per Share Amounts)

additional indebtedness and (4) modified the interest margins to provide that the margins will fluctuate based on Wendy's/Arby's Restaurants' corporate credit rating. Wendy's/Arby's Restaurants incurred approximately $3,107 in costs related to Amendment No. 1.

As amended, the term loan under the Credit Agreement and amounts borrowed under the revolving credit facility under the Credit Agreement bear interest at our option at either (i) the Eurodollar Base Rate (as defined in the Credit Agreement), as adjusted pursuant to applicable regulations (but not less than 2.75%), plus an interest rate margin of 4.00%, 4.50%, 5.00% or 6.00% per annum, depending on Wendy's/Arby's Restaurants' corporate credit rating, or (ii) the Base Rate (as defined in the Credit Agreement), which is the higher of the interest rate announced by the administrative agent for the Credit Agreement as its base rate and the Federal funds rate plus 0.50% (but not less that 3.75%), in either case plus an interest rate margin of 3.00%, 3.50%, 4.00% or 5.00% per annum, depending on Wendy's/Arby's Restaurants' corporate credit rating. Based on Wendy's/Arby's Restaurants' corporate credit rating at the effective date of Amendment No. 1 and as of September 27, 2009, the applicable interest rate margins available to us were 4.50% for Eurodollar Base Rate borrowings and 3.50% for Base Rate borrowings. Since the effective date of Amendment No. 1 and as of September 27, 2009, we have elected to use the Eurodollar Base Rate which resulted in a rate of 7.25% for the 2009 third quarter.

Concurrent with the closing of the issuance of the Senior Notes, we prepaid the term loan under the Credit Agreement in an aggregate principal amount of $132,500 and accrued interest thereon.

Derivatives

During the third quarter of 2009, we entered into several interest rate swap agreements (the "Interest Rate Swaps") with notional amounts totaling $361,000 that swap the fixed rate interest rates on our 6.20% and 6.25% Wendy's Senior Notes for floating rates. The Company's primary objective for entering into derivative instruments is to manage its exposure to changes in interest rates, as well as to maintain an appropriate mix of fixed and variable rate debt.

The Interest Rate Swaps are accounted for as fair value hedges and qualify for the short-cut method under the applicable guidance. At September 27, 2009, the fair value of our Interest Rate Swaps was $2,765 and has been included in "Deferred costs and other assets" and as an adjustment to the carrying amount of the 6.20% and 6.25% Wendy's Senior Notes in the accompanying balance sheet.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands Except Per Share Amounts)

(4) Fair Value Measurement of Financial Assets and Liabilities

The carrying amounts and estimated fair values of the Company’s financial assets and liabilities were as follows:

	September 27, 2009	
	Carrying Amount	Fair Value
Financial assets:		
Cash and cash equivalents (a)	$644,646	$644,646
Restricted cash equivalents (a):		
Current	986	986
Non-current	6,732	6,732
Short-term investments (b)	224	224
Deerfield Capital Corp. (“DFR”) notes receivable (c)	25,607	26,043
Non-current cost investments for which it is:		
Practicable to estimate fair value (d)	10,097	11,155
Not practicable to estimate fair value (e)	645	
Interest Rate Swaps (f)	2,765	2,765
Financial liabilities:		
Long-term debt, including current portion:		
10.00% Senior Notes (b)	551,413	597,770
Senior secured term loan, weighted average effective interest of 7.25% (b)	252,805	254,067
6.20% senior notes (b)	204,455	220,500
6.25% senior notes (b)	192,482	198,400
Sale-leaseback obligations (g)	125,720	121,258
Capitalized lease obligations (g)	91,544	87,867
7% Debentures (b)	79,793	72,500
6.54% secured bank term loan (g)	19,126	18,735
Notes payable, weighted average interest of 7.27% (g)	4,402	4,367
5% convertible notes (h)	2,100	2,045
Other	1,506	1,482
Total long-term debt, including current portion	$1,525,346	$1,578,991
Guarantees of:		
Lease obligations for Arby’s restaurants not operated by the Company (i)	398	398
Wendy’s franchisee loans obligations (j)	663	663

(a) The carrying amounts approximated fair value due to the short-term maturities of the cash equivalents or restricted cash equivalents.

(b) The fair values are based on quoted market prices. (Level 1 inputs)

(c) The fair value of the DFR Notes received in connection with the Deerfield Sale was based on the present value of the probability weighted average of expected cash flows of the DFR Notes.

(d) These consist of investments in certain non-current cost investments. The fair values of these investments, other than Jurlique International Pty Ltd., an Australian skin and beauty products company not publicly traded ("Jurlique"), were based entirely on statements of account received from investment managers or investees which are principally based on quoted market or broker/dealer prices. To the extent that some of these investments, including the underlying investments in investment limited partnerships, do not have available quoted market or broker/dealer prices, the Company relies on valuations performed by the investment managers or investees in valuing those investments or third-party appraisals.

(e) It was not practicable to estimate the fair value of this cost investment because the investment is non-marketable.

(f) The fair values were based on information provided by the bank counterparties that is model-driven and whose inputs are observable or whose significant value drivers are observable. (Level 2 inputs)

(g) The fair values were determined by discounting the future scheduled principal payments using an interest rate assuming the same original issuance spread over a current Treasury bond yield for securities with similar durations.

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(In Thousands Except Per Share Amounts)

(h) The fair values were based on broker/dealer prices since quoted ask prices close to our fiscal quarter end date were not available for the remaining convertible notes.

(i) The fair value was assumed to reasonably approximate the carrying amount since the carrying amount represents the fair value as of the acquisition of RTM Restaurant Group less subsequent amortization.

(j) Wendy's provided loan guarantees to various lenders on behalf of franchisees entering into pooled debt facility arrangements for new store development and equipment financing. Wendy's has accrued a liability for the fair value of these guarantees, the calculation for which was based upon a weighed average risk percentage established at the inception of each program.

The carrying amounts of current accounts and notes receivable and non-current notes receivable (excluding the DFR Notes described above) approximated fair value due to the related allowance for doubtful accounts and notes receivable. The carrying amounts of accounts payable and accrued expenses and advertising fund restricted assets and liabilities approximated fair value due to the short-term maturities of those items.

(5) Impairment of Long-lived Assets

	Three Months Ended		Nine Months Ended	
	September 27, 2009	September 28, 2008	September 27, 2009	September 28, 2008
Arby's restaurant segment:				
Impairment of Company-owned restaurants:				
Properties	$ 13,923	$ 4,053	$ 25,719	$ 5,207
Intangible assets	1,319	528	2,257	791
	15,242	4,581	27,976	5,998
Wendy's restaurant segment:				
Impairment of surplus properties:	286	-	956	-
Corporate	-	9,623	2,176	9,623
Total impairment of long-lived assets	$ 15,528	$ 14,204	$ 31,108	$ 15,621

The Arby's restaurant segment impairment losses reflect (1) the deterioration in operating performance of certain restaurants and (2) additional charges for restaurants impaired in a prior year. The Wendy's restaurant segment impairment losses reflect write-downs in the carrying value of surplus properties and properties held for sale.

The Corporate impairment loss reflects the reduction of our carrying value of one of our corporate aircraft to its net realizable value based on the sale of this aircraft in July 2009.

Impairment losses represented the excess of the carrying value over the fair value of the affected assets and are included in "Impairment of long-lived assets." The fair values of impaired assets discussed above for the Arby's restaurants segment were estimated based upon the present values of the anticipated cash flows associated with each asset (a Level 3 estimate). The fair values of the impaired assets (a Level 3 estimate) discussed above for the Wendy’s restaurants segment were estimated based upon their expected realizable value, which reflect market declines in the areas where the properties are located.

(6) Facilities Relocation and Corporate Restructuring

The facilities relocation and corporate restructuring charges in our restaurant segment for the nine months ended September 27, 2009 of $8,899 are primarily related to severance costs associated with the Wendy’s Merger. For the remainder of 2009, we expect to incur additional facilities relocation and corporate restructuring charges of $1,349 related to additional severance costs from the Wendy’s Merger.

WENDY'S/ARBY'S GROUP, INC. AND SUBSIDIARIES
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(In Thousands Except Per Share Amounts)

An analysis of activity in the facilities relocation and corporate restructuring accrual during the nine months ended September 27, 2009 is as follows:

	Nine Months Ended September 27, 2009					
	Balance December 28, 2008	Provision	Payments	Balance September 27, 2009	Total Expected to be Incurred	Total Incurred to Date
Wendy's restaurant segment:						
Cash obligations:						
Severance costs	$ 3,101	$ 8,971	$ (6,215)	$ 5,857	$ 13,421	$ 12,072
Total Wendy's restaurant segment	3,101	8,971	(6,215)	5,857	13,421	12,072
Arby's restaurant segment:						
Cash obligations:						
Employee relocation costs	72	(72)	-	-	4,579	4,579
Other	-	-	-	-	7,471	7,471
	72	(72)	-	-	12,050	12,050
Non-cash charges	-	-	-	-	719	719
Total Arby's restaurant segment	72	(72)	-	-	12,769	12,769
Corporate:						
Cash obligations:						
Severance and retention incentive compensation	962	-	(348)	614	84,622	84,622
Non-cash charges	-	-	-	-	835	835
Total corporate	962	-	(348)	614	85,457	85,457
	$ 4,135	$ 8,899	$ (6,563)	$ 6,471	$ 111,647	$ 110,298

(7) Investment in Joint Venture with Tim Hortons Inc.

Wendy's is a partner in a Canadian restaurant real estate joint venture ("TimWen") with Tim Hortons Inc. Wendy's 50% share of the joint venture is accounted for using the Equity Method. Our equity in earnings from TimWen is included in "Other operating expense (income), net".

Presented below is a summary of components related to our investment in TimWen included in our Condensed Consolidated Balance Sheet and Condensed Consolidated Statement of Operations as of and for the nine months ended September 27, 2009.

Balance at December 28, 2008	$	89,771	
Equity in earnings for the nine months ended September 27, 2009		8,289	
Amortization of purchase price adjustments		(2,031	)
		6,258	(a)
Distributions		(7,106	)
Currency translation adjustment included in “Comprehensive income”		10,457	
Balance at September 27, 2009	$	99,380	(b)

(a) Equity in earnings for the nine months ended September 27, 2009 is included in “Other operating expense (income), net”.

(b) Included in “Investments”.

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Presented below is a summary of unaudited financial information of TimWen as of and for the nine months ended September 27, 2009 in Canadian dollars. The summary balance sheet financial information does not distinguish between current and long-term assets and liabilities:

		September 27, 2009 (Canadian)
Balance sheet information:		
Properties	C$	84,223
Cash and cash equivalents		8,465
Accounts receivable		5,026
Other		2,168
	C$	99,882
Accounts payable and accrued liabilities	C$	1,277
Other liabilities		10,902
Partners' equity		87,703
	C$	99,882

		Nine months ended September 27, 2009 (Canadian)
Income statement information:		
Revenues	C$	28,769
Income before income taxes and net income		19,281

(8) Other Than Temporary Losses on Investments

	Three Months Ended				Nine Months Ended			
	September 27, 2009		September 28, 2008		September 27, 2009		September 28, 2008	
Cost method investments	$	-	$	3,000	$	3,115	$	6,500
Available-for-sale security		-		5,100		801		5,100
DFR common stock		-		-		-		68,086
	$	-	$	8,100	$	3,916	$	79,686

We analyze our unrealized losses on a quarterly basis. Due to current market conditions and other factors, we recorded other than temporary losses on investments of $3,916 for the first nine months of 2009 (none in the 2009 third quarter) attributable primarily to the decline in fair value of two of our cost investments. Any other than temporary losses on our investments are dependent upon the underlying economics and/or volatility in their value and may or may not recur in future periods. We recorded other than temporary losses in the first nine months of 2008 of $6,500 (including $3,000 in the 2008 third quarter) attributable to a decline in the value of our investment in Jurlique. We recorded other than temporary losses on investments in the 2009 first nine months and the 2008 first nine months of

$801 and $5,100, respectively, related to other than temporary losses on available-for-sale securities in an equities account which was managed by a management company formed by our Chairman, who is our former Chief Executive Officer, and our Vice Chairman, who is our former President and Chief Operating Officer, and a director, who is also our former Vice Chairman.

As described in the Form 10-K, based on the decline in the market price of the shares received in connection with the sale of our interest in Deerfield to DFR , we concluded that the fair value and, therefore, the carrying value of the common shares owned by us was impaired. As a result, we recorded an other than temporary loss for the 2008 first quarter of $68,086 (without tax benefit) which included $11,074 of pre-tax unrealized holding losses recorded prior to 2008. As a result of the distribution of the DFR common stock, the income tax loss that resulted from the decline in value of our investment of $68,086 is not deductible for income tax purposes and no income tax benefit was recorded related to this loss.

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(9) Income Taxes

The effective tax rate for the three months ended September 27, 2009 was 36.4%. For the three months ended September 28, 2008 we recorded a tax provision of $2,938 despite the loss from continuing operations before income taxes and minority interests. The effective rates vary from the U.S. Federal statutory rate of 35% due to the 2009 and 2008 three month effect of (1) state income taxes, net of Federal income tax benefit, (2) non-deductible expenses, (3) adjustments to our uncertain tax positions, (4) changes in our estimated full year tax rates, and (5) tax credits as well as the effect in the 2009 third quarter of adjustments related to prior year tax matters.

The effective tax rate for the nine months ended September 27, 2009 and the effective tax rate benefit for the nine months ended September 28, 2008 were 39.5% and 12.3%, respectively. These rates vary from the U.S. Federal statutory rate of 35% due to the 2009 adjustments related to prior year tax matters and to the 2009 and 2008 first nine months effect of (1) state income taxes, net of Federal income tax benefit, (2) non-deductible expenses, (3) adjustments to our uncertain tax positions, and (4) tax credits and the effect of the other than temporary loss in 2008 on our investment in the common stock of DFR, which, as a result of its subsequent distribution to shareholders, is not deductible for income tax purposes and no tax benefit was recorded related to this loss.

For the nine months ended September 27, 2009 we increased our unrecognized tax benefits for prior periods by $1,438 for additions and decreased the same by $697 for statute expirations. We increased interest on unrecognized tax benefits by $902. In the nine months ended September 28, 2008, an examination of one state income tax return was settled for fiscal years 1998 through 2000. Since this tax position was settled for less than we previously anticipated, we recorded an income tax benefit of $1,516 and a reduction of related interest expense of $1,071 in the nine months ended September 28, 2008. There were no other significant changes to unrecognized tax benefits in the nine months ended September 27, 2009 and September 28, 2008.

We include unrecognized tax benefits and the related interest and penalties for discontinued operations in "Liabilities related to discontinued operations." In the three months ended September 28, 2008, examinations by three jurisdictions were favorably settled and we recorded a benefit of $1,251 to "Income from discontinued operations, net of income taxes." There were no other significant changes in unrecognized tax benefits and the related interest and penalties for discontinued operations during the nine months ended September 27, 2009 and September 28, 2008.

The Internal Revenue Service (the "IRS") is currently conducting an examination of our U.S. Federal income tax return for the 2009 tax year as part of the Compliance Assurance Program ("CAP"). We participated in the CAP for our tax period ended December 28, 2008 and prior to the Wendy's Merger, Wendy's was a participant in the CAP since the beginning of the 2006 tax year. CAP is a voluntary, real-time audit arrangement whereby taxpayers and the IRS address issues throughout the year as they emerge. Any matters relating to Wendy's U.S. Federal income tax returns for 2007 and prior years have been settled.

Wendy's/Arby's U.S. Federal income tax returns for periods ended December 31, 2006 to September 29, 2008 are not currently under examination by the IRS. Our foreign income tax returns and Wendy's foreign income tax returns for periods prior to the Wendy's Merger are open to examination primarily for periods ending on or after January 1, 2006. Certain of these foreign income tax returns are currently under examination. Some of our state income tax returns and some of the Wendy's state income tax returns for periods prior to the Wendy's Merger are currently under examination. Certain of these states have issued notices of proposed tax assessments aggregating $8,865. We dispute these notices and believe their ultimate resolution will not have a material adverse impact on our consolidated financial position or results of operations.

(10) Income (loss) Per Share

Basic income (loss) per share is computed by dividing net income (loss) by the weighted average number of common shares outstanding. As described in the Form 10-K, in connection with the Wendy’s Merger, Wendy’s/Arby’s stockholders approved the Conversion whereby each of the then outstanding shares of Triarc class B common stock (“Class B Common Stock”) were converted into one share of Wendy’s/Arby’s Class A common stock and accordingly we now only have one class of common stock. In connection with the May 28, 2009 amendment and restatement of our Certificate of Incorporation, our Class A common stock is now referred to as Common Stock. Net loss for the three and nine month periods ended September 28, 2008 of $12,147 and $86,523, respectively, was allocated equally among each share of Common Stock and Class B Common Stock resulting in the same loss per share for each class.

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Diluted income per share for the three and nine month periods ended September 27, 2009 has been computed by dividing the allocated income for the Common Stock by the weighted average number of shares plus the potential common share effect of dilutive stock options and nonvested restricted Common Shares (the "Nonvested Shares"), both computed using the treasury stock method. Diluted income per share for the three and nine month periods ended September 28, 2008 were the same as basic loss per share for each share of the Common Stock and Class B Common Stock since we reported a loss and, therefore, the effect of all potentially dilutive securities on the loss per share would have been antidilutive. The shares used to calculate diluted income per share exclude any effect of our 5% convertible notes due 2023 (the "Convertible Notes") which would have been antidilutive since the after-tax interest on the Convertible Notes per share of Common Stock obtainable on conversion exceeded the reported basic income from continuing operations per share. For the three and nine months ended September 27, 2009, we excluded 19,928 potential common shares from our diluted per share calculation as they would have had anti-dilutive effects. The basic and diluted income from discontinued operations per share for the three and nine month periods ended September 27, 2009 was less than $0.01 and, therefore, is not presented.

Our securities as of September 27, 2009 that could dilute basic income per share for periods subsequent to September 27, 2009 are (1) outstanding stock options which can be exercised into 27,965 shares of our Common Stock, (2) 1,472 restricted shares of Common Stock which principally vest over three years and (3) $2,100 of Convertible Notes which are convertible into 160 shares of Common Stock.

Income (loss) per share has been computed by allocating the income or loss as follows:

	Three Months Ended		Nine Months Ended	
	September 27, 2009	September 28, 2008	September 27, 2009	September 28, 2008
Common Stock:				
Continuing Operations	$ 14,266	$ (4,170)	$ 18,234	$ (27,380)
Discontinued Operations	422	380	422	380
Net income (loss)	$ 14,688	$ (3,790)	$ 18,656	$ (27,000)
Class B Common Stock:				
Continuing Operations	N/A	$ (9,196)	N/A	$ (60,362)
Discontinued Operations	N/A	839	N/A	839
Net income (loss)	N/A	$ (8,357)	N/A	$ (59,523)

The number of shares used to calculate basic and diluted income (loss) per share are as follows:

	Three Months Ended		Nine Months Ended	
	September 27, 2009	September 28, 2008	September 27, 2009	September 28, 2008
Common Stock:				
Basic shares - weighted average shares outstanding	468,008	28,905	468,670	28,903

Dilutive effect of stock options and restricted shares	3,385	-	2,423	-
Diluted shares	471,393	28,905	471,093	28,903
Class B Common Stock:				
Basic shares - weighted average shares outstanding	N/A	63,745	N/A	63,720
Dilutive effect of stock options and restricted shares	N/A	-	N/A	-
Diluted shares	N/A	63,745	N/A	63,720

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(11) Equity

The following is a summary of the changes in equity:

	Nine Months Ended September 27, 2009	Nine Months Ended September 28, 2008
Balance, beginning of year	$ 2,383,291	$ 448,874
Effect of change in accounting for non-controlling interests	154	154
Beginning balance, as adjusted	2,383,445	449,028
Comprehensive income (loss) (1)	48,999	(80,421)
Share-based compensation expense	11,654	3,932
Stock option exercises	1,935	-
DFR stock dividend distribution	-	(14,464)
Dividends declared but not yet paid	-	(7,404)
Dividends paid	(21,088)	(16,101)
Repurchases of common stock for treasury	(25,244)	-
Other	(195)	(181)
Balance, end of period	$ 2,399,506	$ 334,389

(1) The following is a summary of the components of comprehensive income (loss), net of income taxes:

	Nine Months Ended September 27, 2009	Nine Months Ended September 28, 2008
Net income (loss)	$ 18,656	$ (86,523)
Net change in currency translation adjustment	30,415	(149)
Net unrealized (losses) gains on available-for-sale securities (a)	(72)	6,196
Net unrealized gains on cash flow hedges (b)	-	55
Other comprehensive income	30,343	6,102
Comprehensive income (loss)	$ 48,999	$ (80,421)

(a) Net unrealized (losses) gains on available-for-sale securities:

	Nine Months Ended September 27, 2009	Nine Months Ended September 28, 2008
Unrealized holding gains arising during the period	$ 62	$ 1,664
Reclassifications of prior period unrealized holding (gains) losses into net loss	(168)	8,262
Change in unrealized holding gains and losses arising during the period from investments under the equity method of accounting	-	(201)
	(106)	9,725
Income tax benefit (provision)	34	(3,529)

$	(72	)	$	6,196

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(b) Net unrealized gains on cash flow hedges		Nine Months Ended September 28, 2008
Unrealized holding losses arising during the period	$	(1,526)
Reclassifications of prior period unrealized holding losses into net income or loss		1,613
Change in unrealized holding gains and losses arising during the period from investments under the equity method of accounting		3
		90
Income tax provision		(35)
	$	55

(12) Business Segments

We manage and internally report our operations in two brand segments: (1) the operation and franchising of Wendy’s restaurants, including its wholesale bakery operations, and (2) the operation and franchising of Arby’s restaurants. We evaluate segment performance and allocate resources based on each segment’s operating profit (loss) and other financial and non-financial factors.

In the first quarter of 2009, Wendy’s/Arby’s began charging the restaurant segments for support services based upon budgeted segment revenues. Prior to that date, the restaurant segments had directly incurred such costs. Commencing with the second quarter of 2009, Wendy’s/Arby’s Restaurants established a shared service center in Atlanta and allocated its operating costs to the restaurant segments based also on budgeted segment revenues.

The following is a summary of our segment information:

	Three months ended September 27, 2009			
	Wendy’s Restaurants	Arby’s Restaurants	Corporate	Total
Revenues:				
Sales	$536,802	$269,236	$-	$806,038
Franchise revenues	76,713	20,470	-	97,183
	$613,515	$289,706	$-	$903,221
Depreciation and amortization	$31,444	$14,343	$1,233	$47,020
Operating profit (loss)	$69,876	$(8,862)	$(4,192)	$56,822
Interest expense				(36,457)
Investment expense, net				737
Other income, net				1,319
Income from continuing operations before income taxes				$22,421

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	Three months ended September 28, 2008		
	Arby's Restaurants	Corporate	Total
Revenues:			
Sales	$287,641	$-	$287,641
Franchise revenues	22,730	-	22,730
	$310,371	$-	$310,371
Depreciation and amortization	$15,875	$622	$16,497
Operating profit (loss)	$23,731	$(19,934)	$3,797
Interest expense			(13,585)
Investment income, net			6,724
Other than temporary losses on investments			(8,100)
Other income, net			736
Loss from continuing operations before income tax benefit			$(10,428)

	Nine months ended September 27, 2009			
	Wendy's Restaurants	Arby's Restaurants	Corporate	Total
Revenues:				
Sales	$1,582,928	$812,548	$-	$2,395,476
Franchise revenues	224,006	60,410	-	284,416
	$1,806,934	$872,958	$-	$2,679,892
Depreciation and amortization	$96,739	$42,481	$4,149	$143,369
Operating profit (loss)	$155,400	$(3,950)	$(24,187)	$127,263
Interest expense				(89,671)
Investment expense, net				(3,850)
Other than temporary losses on investments				(3,916)
Other income, net				303
Income from continuing operations before income taxes				$30,129

	Nine months ended September 28, 2008		
	Arby's Restaurants	Corporate	Total
Revenues:			
Sales	$860,560	$-	$860,560
Franchise revenues	65,679	-	65,679
	$926,239	$-	$926,239
Depreciation and amortization	$45,978	$2,788	$48,766
Operating profit (loss)	$58,344	$(38,242)	$20,102
Interest expense			(41,020)
Investment income, net			3,189
Other than temporary losses on investments			(79,686)

Other expense, net