

PKF PERSPECTIVES

Highlights of the Job Creation and Worker Assistance Act of 2002

On March 9, 2002, the President signed into law the **Job Creation and Worker Assistance Act of 2002**. The Act contains business economic stimulus provisions and provides relief for Lower Manhattan businesses that were affected by the September 11 terrorist attacks. In addition, the Act contains a 13-week extension of unemployment benefits, extensions of tax benefits that were scheduled to expire, and various technical corrections.

Discussed below are the business economic stimulus provisions of the Act.

ADDITIONAL 30% FIRST-YEAR DEPRECIATION FOR MOST TYPES OF NEW DEPRECIABLE PROPERTY PLACED IN SERVICE AFTER SEPTEMBER 10, 2001.

Effective for "qualified property" acquired after September 10, 2001 and before September 11, 2004, and (generally) placed in service before January 1, 2005, the Act provides for an additional depreciation deduction in the year the property is placed in service, equal to 30% of the cost of the property. Qualified property must be original use property and includes (in part) the following:

- a. Property subject to MACRS depreciation rules and having a recovery period of 20 years or less.
- b. Computer software for which a deduction is allowable under Internal Revenue Code section 167(a) without regard to Code section 168(k).
- c. Qualified leasehold improvement property which is any improvement to an interior portion of a building which is nonresidential real property, if:
 - ❖ the improvement is made under or pursuant to a lease, either by the lessee, sublessee, or lessor of the building portion,
 - ❖ the portion of the building is to be occupied exclusively by the lessee (or any sublessee), and
 - ❖ the improvement is placed in service more than 3 years after the date the building was first placed in service.

Qualified leasehold improvement property **does not** include any improvements for which the expense is attributable to:

- ❖ enlargement of the building,
- ❖ any elevator or escalator,
- ❖ any structural component benefitting a common area, and
- ❖ the internal structural framework of the building.

The additional depreciation allowance applies for property placed in service after September 10, 2001, in tax years ending after that date. It applies even if the property is placed in service as late as on the last day of the taxpayer's tax year.

For depreciation purposes, the cost of the qualified property is reduced by the additional 30% depreciation deduction before computing the amount otherwise allowable as a depreciation deduction for the tax year and any later tax year.

Illustration: On September 20, 2001, ABX, a calendar-year company, bought and placed in service \$100,000 of property having a tax life of five years. Applying the pre-Act rules, the first year depreciation generally would have been \$20,000. Under the new Act, the company may claim a first year depreciation allowance of \$44,000 $[(\$100,000 \times .30 = \$30,000) + (\$100,000 - \$30,000 \times .2 = \$14,000)]$.

In addition, if "bonus depreciation" (*Internal Revenue Code Sec. 179*) is claimed on qualified property, this bonus amount "comes off the top" before the additional 30% first-year depreciation allowance is computed. The regular first year depreciation is then computed by using the adjusted basis remaining after the bonus depreciation and the additional 30% depreciation allowance.

Illustration: The facts are the same as above, except that ABX is eligible and claims the Sec. 179 depreciation of \$24,000. Under the new law, the business may write off a total of \$57,440 in depreciation allowance $[\$24,000 + (\$100,000 - \$24,000 \times .30 = \$22,800) + (\$100,000 - \$24,000 - \$22,800 \times .2 = \$10,640)]$.

The 30% additional depreciation allowance applies to qualified property unless the taxpayer "elects out". The election out may be made for any class of property for any tax year, and if made applies to all property in that class placed in service during that tax year.

Property **ineligible** for the 30% additional depreciation includes:

- ❖ property used predominantly outside the U.S.;
- ❖ listed property (such as automobiles) that is not used more than 50% for business;
- ❖ New York Liberty Zone qualified leasehold improvement property.

The additional depreciation deduction is allowed for both regular tax and Alternative Minimum Tax (AMT).

FIRST-YEAR DEPRECIATION DOLLAR CAP FOR NEW PASSENGER AUTOS RAISED BY \$4,600.

The first-year depreciation dollar cap for a new passenger auto that is qualified property and purchased and placed in service after September 10, 2001 and before January 1, 2003, is increased by \$4,600. In other words, the maximum first-year depreciation allowance for a new passenger auto becomes \$7,660. In order to be eligible for any additional first year depreciation, the auto must be used more than 50% in a trade or business.

This provision is effective for autos placed in service after September 10, 2001, in tax years ending after that date.

TEMPORARY INCREASE IN NOL PERIOD.

The Act increases the two-year carryback period for net operating losses to five years for NOLs arising in tax years ending in 2001 or 2002. A taxpayer may irrevocably elect to forgo the five-year carryback period and instead carry the NOL back 2 years and forward 20 years.

TEMPORARY WAIVER OF LIMITATION ON USE OF NOLs AGAINST ALTERNATIVE MINIMUM TAX.

Under pre-Act rules, an Alternative Minimum Tax (AMT) net operating loss deduction cannot reduce the taxpayer's Alternative Minimum Taxable Income (AMTI) by more than 90% of the AMTI. Under the Act, the AMT net operating loss attributable to (1) NOL carrybacks arising in tax years ending in 2001 or 2002, or (2) NOL carryforwards to 2001 and 2002 tax years, may offset 100% of a taxpayer's AMTI.

Because of this rule, and the temporary increase in the NOL carryback period discussed above, an AMT net operating loss arising in 2001 can now be carried back to 1996 and fully offset the taxpayer's AMTI for 1996.

These provisions create many possibilities for tax planning, not only for the future, but the past as well. Businesses, for example, may now be able to carry back losses to profitable years that were, before the Act, "closed". In addition, many businesses that already have filed income tax returns for 2001 should consider amending their returns if there have been any significant acquisitions of qualified property.



Although not entirely clear at this time, businesses that have already carried back net operating losses, or elected to carry them forward on filed returns, should be able to modify such claims and elections. Additional information from the IRS should be forthcoming in the near future.

Items in this publication should not be considered official statements of position, nor advice for individuals or organizations without consulting a tax advisor. For more information, please contact Howard Pell or Leo Parmegiani at:



**Certified Public Accountants
A Professional Corporation**

420 Lexington Avenue New York, NY 10170
Telephone: (212) 867-8000 Telefax: (212) 687-4346

www.pkfnewyork.com
E-mail: info@pkfnyc.com