

**SUMMARY OF P. L. 107-147, THE
“JOB CREATION AND WORKER ASSISTANCE ACT OF 2002”**

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the Staff of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a summary of P.L. 107-147, the “Job Creation and Worker Assistance Act of 2002.”

¹ This document may be cited as follows: Joint Committee on Taxation, *Summary of P. L. 107-147, the “Job Creation and Worker Assistance Act of 2002”* (JCX-22-02), March 22, 2002.

I. BUSINESS PROVISIONS

A. Special Depreciation Allowance for Certain Property

The Act allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified property. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. In order for property to qualify it generally must meet all of the following requirements. First, the property must be property to which the general rules of MACRS apply with (1) an applicable recovery period of 20 years or less, (2) water utility property, (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property. Second, the original use of the property must commence with the taxpayer on or after September 11, 2001 (except for certain leased property). Third, the taxpayer must purchase (or begin construction of) the property after September 10, 2001, and before September 11, 2004 (binding contract rules apply). Finally, the property generally must be placed in service before January 1, 2005.

The provision applies to property placed in service after September 10, 2001.

B. Five-Year Carryback of Net Operating Losses

The Act temporarily extends the general net operating loss ("NOL") carryback period to five years (from two years) for NOLs arising in taxable years ending in 2001 and 2002. In addition, the five-year carryback period applies to NOLs from these years that qualify under present law for a three-year carryback period. A taxpayer can irrevocably elect to forgo the five-year carryback period. If a taxpayer elects to forgo the five-year carryback period, then the losses are subject to the rules that otherwise would apply under section 172 absent the provision. The 5-year carryback provision is effective for net operating losses generated in taxable years ending after December 31, 2000.

The provision also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, to offset 100 percent of a taxpayer's alternative minimum taxable income ("AMTI"). The provision allowing the use of NOL carrybacks and carryforwards to offset 100 percent of is effective for taxable years ending before January 1, 2003.

II. UNEMPLOYMENT ASSISTANCE PROVISIONS

A. Unemployment Assistance

Effective on date of enactment, the Act provides for up to 13 weeks of temporary extended unemployment benefits for eligible displaced workers. These benefits would be available in any state entering into an agreement with the Secretary of Labor to provide such extended benefits.

Benefits would be available to workers who filed an initial claim for unemployment benefits on or after March 15, 2001 (that is, approximately when the recent recession began), and who remain unable to find work after having exhausted their regular unemployment benefits.

In states continuing to experience a high rate of unemployment (those with an insured unemployment rate of at least 4 percent), displaced workers who exhaust their up to 13 weeks of temporary extended unemployment benefits provided nationwide, as described above, would be eligible for up to an additional 13 weeks of temporary extended unemployment benefits.

The benefits would be 100 percent Federally funded and would be available through December 31, 2002, or until a state terminates its agreement, if sooner.

B. Special Reed Act Transfer in Fiscal Year 2002

When three Federal accounts in the Unemployment Trust Fund (“UTF”) reach their statutory limits at the end of a Federal fiscal year, any excess funds are transferred to the individual state accounts in the UTF. These transfers are called “Reed Act” distributions. States generally can use this funding for payment of cash benefits and administering their unemployment compensation and employment services programs. The Balanced Budget Act of 1997 (the “1997 Act”) limited Reed Act transfers to states to \$100 million after each of fiscal years 1999, 2000, and 2001 and limited these funds' use to paying administrative expenses of unemployment compensation laws.

The Act repeals the \$100 million limit on distributions from excess Federal funds available at the end of fiscal year 2001. The Act also repeals the 1997 Act limitation on the use of such funds. Under the Act, the Secretary of the Treasury will transfer excess Federal UTF balances as of the close of fiscal year 2001 into the account of each state in the UTF. Total transfers will be capped at no more than \$8 billion.

Transfers under this provision shall be made within 10 days following enactment.

III. TAX BENEFITS FOR AREA OF NEW YORK CITY DAMAGED IN TERRORIST ATTACKS ON SEPTEMBER 11, 2001

A. Expansion of Work Opportunity Tax Credit Targeted Categories to Include Certain Employees in New York City

The Act creates a new targeted group for the work opportunity tax credit (“WOTC”).² For the new category, the maximum credit is \$2,400 (40 percent of \$6,000 of qualified wages) per qualified employee in each taxable year. The portion of each employer’s WOTC credit attributable to the new targeted group is allowed against the alternative minimum tax.

² A separate provision of this Act includes a general 2-year extension of WOTC.

Generally, the new targeted group is individuals who perform substantially all their services for a business located in the “New York Liberty Zone”.³ The new targeted group also includes individuals who perform substantially all their services in New York City for a business that relocated from the New York Liberty Zone elsewhere within New York City due to the physical destruction or damage of their workplaces within the New York Liberty Zone by the September 11, 2001, terrorist attack. Generally qualified wages for purposes of this targeted group are wages paid or incurred for work performed in the New York Liberty Zone after December 31, 2001, and before January 1, 2004, by such qualified individuals. No credit for this new category of workers is allowed if the otherwise qualifying employer employed on average more than 200 employees during the taxable year in question.

The provision is effective in taxable years ending after December 31, 2001 (for wages paid or incurred to qualified individuals for work after December 31, 2001 and before January 1, 2004).

B. Special Depreciation Allowance for Certain Property

The provision allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified New York Liberty Zone property. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer’s alternative minimum taxable income with respect to property to which the provision applies. Property eligible for the additional first-year depreciation under section 168(k) (i.e., the general bonus depreciation provision) is not eligible for the New York Liberty Zone additional first-year depreciation. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction it generally must meet all of the following requirements. First, the property must be property to which the general rules of MACRS apply with (1) an applicable recovery period of 20 years or less, (2) water utility property, (3) certain nonresidential real property and residential rental property, or (4) computer software other than computer software covered by section 197. A special rule precludes the additional first year depreciation under this provision for (1) qualified New York Liberty Zone leasehold improvement property and, (2) property eligible for the additional first year depreciation under section 168(k). Second, substantially all of the use of such property must be in the New York Liberty Zone. Third, the original use of the property in the New York Liberty Zone must commence with the taxpayer on or after September 11, 2001(except for certain leased property). Finally, the property must be acquired by purchase by

³ The “New York Liberty Zone” means the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York. The New York Liberty Zone has the same definition throughout this Act.

the taxpayer (1) after September 10, 2001, and placed in service on or before December 31, 2006. For qualifying nonresidential real property and residential rental property the property must be placed in service on or before December 31, 2009. Property will not qualify if a binding written contract for the acquisition of such property is in effect before September 11, 2001.

Nonresidential real property and residential rental property is eligible for the additional first-year depreciation only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned as a result of the terrorist attacks of September 11, 2001. Property shall be treated as replacing destroyed property, if as part of an integrated plan, such property replaces real property which is included in a continuous area which includes real property destroyed or condemned. For purposes of this provision, it is intended that real property destroyed (or condemned) only include circumstances in which an entire building or structure was destroyed (or condemned) as a result of the terrorist attacks. Otherwise, such property is considered damaged real property.

C. Authorize Issuance of Tax-Exempt Private Activity Bonds for Rebuilding the Portion of New York City Damaged in the September 11, 2001, Terrorist Attack

The provision authorizes issuance during calendar years 2002, 2003, and 2004 of an aggregate amount of \$8 billion of tax-exempt private activity bonds to finance the construction and rehabilitation of nonresidential real property and residential rental real property in the New York Liberty Zone. Issuance of bonds authorized under the provision is limited to projects approved by the Mayor of New York City or the Governor of New York State, each of whom may designate up to \$4 billion of the bonds authorized under the Act.

If the Mayor or the Governor determines that it is not feasible to use all of the authorized bond proceeds which he is authorized to designate for property located in the New York Liberty Zone, up to \$1 billion of bond proceeds (in the aggregate) may be designated by each to be used for the acquisition, construction, and rehabilitation of certain commercial real property (including fixed tenant improvements) located outside the New York Liberty Zone and within New York City.

The provision is effective for bonds issued after the date of enactment and before January 1, 2005.

D. Allow One Additional Advance Refunding for Certain Previously Refunded Bonds for Facilities Located in New York City

The Act permits certain bonds for facilities located in New York City to be advance refunded one additional time. These bonds include only bonds for which all present-law advance refunding authority was exhausted before September 12, 2001, and with respect to which the advance refunding bonds authorized under present law were outstanding on September 11, 2001. The maximum amount of advance refunding bonds that may be issued pursuant to this provision is \$9 billion. The provision is effective on the date of enactment and before January 1, 2005.

E. Increase in Expensing Treatment for Business Property Used in the New York Liberty Zone

The provision increases the amount a taxpayer can deduct under section 179 for qualifying property used in the New York Liberty Zone. Specifically, the provision increases the maximum dollar amount that may be deducted under section 179 by the lesser of (1) \$35,000 or (2) the cost of qualifying property placed in service during the taxable year. Qualifying property means section 179 property purchased and placed in service by the taxpayer after September 10, 2001, and before January 1, 2007, if (1) substantially all of its use is in the New York Liberty Zone in the active conduct of a trade or business by the taxpayer in the zone, and (2) the original use of which in the New York Liberty Zone commences with the taxpayer after September 10, 2001. The provision is effective for property placed in service in taxable years beginning on December 31, 2001 and, before January 1, 2007.

F. Extension of Replacement Period for Certain Property Involuntarily Converted in the New York Liberty Zone

A taxpayer may elect not to recognize gain with respect to property that is involuntarily converted if the taxpayer acquires within a replacement period property similar or related in service or use. If the taxpayer makes the election, gain on the converted property is recognized only to the extent that the amount realized on the conversion exceeds the cost of the replacement property. In general, the replacement period begins with the date of the disposition of the converted property and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized. The Act extends the replacement period to five years for a taxpayer to purchase property to replace property that was involuntarily converted within the New York Liberty Zone as a result of the terrorist attacks that occurred on September 11, 2001. However, the five-year period is available only if substantially all of the use of the replacement property is in New York City. In all other cases, the present-law replacement period rules continue to apply. The provision is effective for involuntary conversions in the New York Liberty Zone occurring on or after September 11, 2001, as a consequence of the terrorist attacks on such date.

G. Treatment of Qualified Leasehold Improvement Property

The provision provides that 5-year property for purposes of the depreciation rules of section 168 includes qualified New York Liberty Zone leasehold improvement property (“qualified NYLZ leasehold improvement property”). The term qualified NYLZ leasehold improvement property means property defined in section 168(e)(6)⁴ that is placed in service after September 10, 2001 and before January 1, 2007 (and not subject to a binding contract on September 10, 2001) in the New York Liberty Zone. The straight-line method is required to be used with respect to qualified NYLZ leasehold improvement property. A 9-year period is specified as the class life of qualified NYLZ leasehold improvement property for purposes of the alternative depreciation system.

⁴ Section 168(e)(6) regarding qualified leasehold improvement property is added by section 205 of the Act.

IV. MISCELLANEOUS AND TECHNICAL PROVISIONS

A. Allowance of Electronic Forms 1099

The Act removes the statutory impediment to providing copies of specified information returns to taxpayers electronically. Accordingly, these copies may be furnished electronically to a recipient who has consented to this; the copies may be furnished in a manner similar to the one permitted with respect to Form W-2 or in another manner provided by the Secretary. The provision is effective on date of enactment.

B. Discharge of Indebtedness of an S Corporation

The Act provides that income from the discharge of indebtedness of an S corporation that is excluded from the S corporation's income is not taken into account as an item of income by any shareholder and thus does not increase the basis of any shareholder's stock in the corporation. The Act generally applies to discharges of indebtedness after October 11, 2001. The Act does not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001.

C. Limitation on Use of Non-Accrual Experience Method of Accounting

Under the Act, the non-accrual experience method of accounting is available only for amounts to be received for the performance of qualified services and for services provided by certain small businesses. Qualified services are services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts or consulting. Under a special rule, the non-accrual experience method of accounting continues to be available for the performance of non-qualified services if the average annual gross receipts (as defined in sec. 448(c)) of the taxpayer (or any predecessor) does not exceed \$5 million. The provision is effective for taxable years ending after date of enactment.

D. Expansion of the Exclusion from Income for Qualified Foster Care Payments

The Act makes two modifications to the present-law exclusion for qualified foster care payments. First, the Act expands the definition of qualified foster care payments to include payments by any placement agency that is licensed or certified by a State or local government, or an entity designated by a State or local government to make payments to providers of foster care. Second, the Act expands the definition of a qualified foster care individual by including foster care individuals placed by a qualified foster care placement agency (regardless of the individual's age at the time of placement). The provision is effective for taxable years beginning after December 31, 2001.

E. Interest Rate Used in Determining Additional Required Contributions to Defined Benefit Plans and PBGC Variable Rate Premiums

The Act expands the permissible range of the statutory interest rate used in calculating an employer-provided defined benefit pension plan's current liability for purposes of applying the additional contribution requirements for plan years beginning after December 31, 2001, and before January 1, 2004. Under the provision, the permissible range is from 90 percent to 120

percent for these years. Use of a higher interest rate under the expanded range will affect the plan's current liability, which may in turn affect the need to make additional contributions and the amount of any additional contributions.

Also, under the Act, the interest rate used in determining the amount of unfunded vested benefits for variable rate premium purposes is increased to 100 percent of the interest rate on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The provision is effective with respect to plan contributions and PBGC variable rate premiums for plan years beginning after December 31, 2001, and before January 1, 2004.

F. Deduction for Classroom Materials

The Act provides an above-the-line deduction for up to \$250 annually of expenses paid or incurred by an eligible educator for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. To be eligible for this deduction, the expenses must be otherwise deductible under 162 as a trade or business expense. The provision is effective for taxable years beginning after December 31, 2001, and before January 1, 2004.

V. TAX TECHNICAL CORRECTIONS

The Act contains technical corrections to recently enacted tax legislation.

VI. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

The Act provides that the Secretary is to estimate annually the impact of the Act on the income and balances of the Social Security trust fund. If the Secretary determines that the Act has a negative impact on the income and balances of the fund, then the Secretary is to transfer from the general revenues of the Federal government an amount sufficient so as to ensure that the income and balances of the Social Security trust funds are not reduced as a result of the Act. Such transfers are to be made not less frequently than quarterly. The Act provides that the provisions of the Act are not to be construed as an amendment of title II of the Social Security Act. The provision is effective on the date of enactment.

VII. EMERGENCY DESIGNATION

The Act designates any revenue loss, new budget authority, and new outlays under the Act in excess of those allowed under the FY 2002 budget resolution as emergency requirements pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985. The provision is effective on the date of enactment.

VIII. EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

A. Extend Alternative Minimum Tax Relief for Individuals

The Act allows an individual to offset the entire regular tax liability and alternative minimum tax liability by the personal nonrefundable credits in 2002 and 2003. The provision is effective for taxable years beginning in 2002 and 2003.

B. Extend Credit for Purchase of Electric Vehicles

The Act defers the phase down of the credit for two years. Taxpayers may claim the full amount of the credit for qualified purchases made in 2002 and 2003. Under the Act, the phase down of the credit value commences in 2004 and the credit is unavailable for purchases after December 31, 2006. A conforming modification is made to section 280F. The provision is effective for property placed in service after December 31, 2001.

C. Extend Section 45 Credit for Production of Electricity from Wind, Closed Loop Biomass and Poultry Litter

The Act extends the placed in service date for qualified facilities by two years to include those facilities placed in service prior to January 1, 2004. The provision is effective for facilities placed in service after December 31, 2001.

D. Extend the Work Opportunity Tax Credit

The Act extends the work opportunity tax credit for two years (through December 31, 2003). The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 2002, and before January 1, 2004.

E. Extend the Welfare-To-Work Tax Credit

The Act extends the welfare to work credit for two years (through December 31, 2003). The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 2002, and before January 1, 2004.

F. Extend Deduction for Qualified Clean-Fuel Vehicle Property and Qualified Clean-Fuel Vehicle Refueling Property

The Act defers the phase down of the deduction for clean-fuel vehicle property by two years. Taxpayers may claim the full amount of the deduction for qualified vehicles placed in service in 2002 and 2003. Under the Act, the phase down of the deduction for clean-fuel vehicles commences in 2004 and the deduction is unavailable for purchases after December 31, 2006. A conforming modification is made to section 280F.

Also, the Act extends the placed in service date for clean-fuel vehicle refueling property by two years. The deduction for clean-fuel vehicle refueling property is available for property placed in service prior to January 1, 2007.

The provision is effective for property placed in service after December 31, 2001.

G. Taxable Income Limit on Percentage Depletion for Marginal Production

The Act extends the period when the 100-percent net-income limit on percentage depletion is suspended to include taxable years beginning in 2002 and 2003. The provision is effective for taxable years beginning after December 31, 2001, and before January 1, 2004.

H. Extension of Authority to Issue Qualified Zone Academy Bonds

The Act authorizes issuance of up to \$400 million of qualified zone academy bonds annually in calendar years 2002 and 2003. The provision is effective for obligations issued after the date of enactment.

I. Extension of Increased Coverover Payments to Puerto Rico and the Virgin Islands

The Act extends the \$13.25-per-proof-gallon coverover rate for two additional years, through December 31, 2003. The provision is effective for articles brought into the United States after December 31, 2001.

J. Tax on Failure to Comply with Mental Health Parity Requirements

With respect to services provided on or after September 30, 2001, the excise tax on failures to comply with mental health parity requirements is amended to apply to benefits for such services provided on or after January 10, 2002, and before January 1, 2004. The provision is effective with respect to plan years beginning after December 31, 2000.

K. Suspension of Reduction of Deductions for Mutual Life Insurance Companies

The Act provides a zero rate for both the differential earnings rate and recomputed differential earnings rate (“true-up”) for a life insurance company's taxable years beginning in 2001, 2002, or 2003, under the rules requiring reduction in certain deductions of mutual life insurance companies (sec. 809). The provision is effective for taxable years beginning after December 31, 2000.

L. Extension of Archer Medical Savings Accounts (“MSAs”)

The Act extends the Archer MSA program for another year, through December 31, 2003. The provision is effective on the January 1, 2002.

M. Extension of Tax Incentives for Investment on Indian Reservations

The Act extends for one year (i.e., through December 31, 2004) the Indian employment credit and the accelerated depreciation rules for property on Indian reservations. The provision is effective on the date of enactment.

N. Extension and Modification of Exceptions under Subpart F for Active Financing Income

The Act extends for five years the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

The Act generally retains present law with respect to the determination of an insurance company's reserve for a life insurance or annuity contract under these exceptions. The Act does, however, permit a taxpayer in certain circumstances, subject to approval by the IRS through the ruling process or in published guidance, to establish that the reserve for such contracts is the amount taken into account in determining the foreign statement reserve for the contract (reduced by catastrophe, equalization, or deficiency reserve or any similar reserve). Present law continues to apply with respect to reserves for any life insurance or annuity contract for which the IRS has not approved the use of the foreign statement reserve.

The provision is effective for taxable years of foreign corporations beginning after December 31, 2001, and before January 1, 2007, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

O. Repeal of Dyed-Fuel Requirement for Registered Diesel or Kerosene Terminals

The diesel fuel and kerosene dyeing mandate is repealed. The provision is effective on January 1, 2002.

IX. TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROVISIONS

A. Reauthorization of TANF Supplemental Grants for Population Increases For Fiscal Year 2002

The Temporary Assistance for Needy Families (TANF) Supplemental Grant program is reauthorized and appropriations are provided for one year (fiscal year 2002) with individual state grant amounts frozen at the exact amount received by the state in fiscal year 2001. The provision is effective upon enactment.

B. 1-Year Extension of Contingency Fund Under the TANF Program

The TANF contingency fund is reauthorized for one year. The provision is effective upon enactment.