

**DESCRIPTION OF THE  
"TAX TECHNICAL CORRECTIONS ACT OF 2002"**

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the "Tax Technical Corrections Act of 2002." The bill was introduced on November 13, 2002, as H.R. 5713 in the House of Representatives and S. 3153 in the Senate.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of the "Tax Technical Corrections Act of 2002"* (JCX-105-02), November 13, 2002.

## TAX TECHNICAL CORRECTIONS

Except as otherwise provided, the technical corrections contained in the bill generally are effective as if included in the originally enacted related legislation.

### **Amendments to the the Job Creation and Worker Assistance Act of 2002**

**Bonus depreciation.**-- Section 101 of the Job Creation and Worker Assistance Act of 2002 provides generally for thirty-percent additional first-year depreciation, and provides a binding contract rule in determining property that qualifies for it. The requirements that must be satisfied in order for property to qualify include that (1) the original use of the property must commence with the taxpayer on or after September 11, 2001, (2) the taxpayer must purchase the property after September 10, 2001 and before September 11, 2004, and (3) no binding written contract for the acquisition of the property is in effect before September 11, 2001. The Act did not specifically require that in sale-leaseback transactions, the property is required to qualify for bonus depreciation in the hands of any person, including a lessee. In addition, the Act provides a special rule in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback. The Act did not specifically address the syndication of a lease by the lessor.

The provision clarifies that property qualifying for additional first-year depreciation does not include any property if a written binding contract for the acquisition (or in the case of property manufactured, constructed, or produced for the taxpayer's own use, for the manufacture, construction, or production of such property) of the property by any person was in effect before September 11, 2001. In addition, the provision provides that if property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

**Five-year carryback of net operating losses ("NOLs").**-- Section 102 of the Job Creation and Worker Assistance Act of 2002 temporarily extends the NOL carryback period to five years (from two years, or three years in certain cases) for NOLs arising in taxable years ending in 2001 and 2002. The Act was enacted in March 2002, after some taxpayers had filed returns for 2001.

The provision: (1) clarifies that only the NOLs arising in the taxable years ending in 2001 and 2002 qualify for the 5-year period, and (2) provides that any election to forego any carrybacks of NOLs arising in 2001 or 2002 can be revoked prior to November 1, 2002. The provision also allows taxpayers until November 1, 2002, to use the tentative carryback adjustment procedures of section 6411 for NOLs arising in 2001 and 2002 (without regard to the 12-month limitation in section 6411). The corrections are consistent with the April 15, 2002, letter sent by the Chairman and Ranking Member of the House Ways and Means Committee and

Senate Finance Committee, as well as the guidance issued by the IRS pursuant to the Congressional letter (Rev. Proc. 2002-40, 2002-23 I.R.B. 1, May 22, 2002).

The provision also makes several clerical changes to the NOL provisions relating to the alternative minimum tax.

**New York Liberty Zone bonus depreciation.**-- Section 301 of the Job Creation and Worker Assistance Act of 2002 provides tax benefits for the area of New York City damaged in terrorist attacks on September 11, 2001 (an area defined in the provision and named the New York Liberty Zone). Under these rules, an additional first-year depreciation deduction is allowed equal to 30 percent of the adjusted basis of qualified New York Liberty Zone ("Liberty Zone") property. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year. In addition, the Act provides a special rule in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback. The Act did not specifically address the syndication of a lease by the lessor.

The provision clarifies that Liberty Zone property qualifying for additional first-year depreciation does not include any property if a written binding contract for the acquisition (or in the case of property manufactured, constructed, or produced for the taxpayers own use, for the manufacture, construction, or production of such property) of the property by any person was in effect before September 11, 2001. In addition, the provision provides that if property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold (or fraction thereof) within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

**New York Liberty Zone expensing.**-- Section 301 of the Job Creation and Worker Assistance Act of 2002 increases the amount a taxpayer may expense under section 179 to the lesser of \$35,000 or the amount of Liberty Zone property placed in service for the year. In addition, section 301(a) of the Act states that if property qualifies for both the general additional first-year depreciation and Liberty Zone additional first-year depreciation, it is deemed to be eligible for the general additional first-year depreciation and is not considered Liberty Zone property (i.e., only one 30-percent additional first-year depreciation deduction is allowed). Because only Liberty Zone property is eligible for the increased section 179 expensing amount, this rule has the unintended consequence of denying the increased section 179 expensing to Liberty Zone property. The provision corrects this unintended result (such that qualifying Liberty Zone property qualifies for both the 30-percent additional first-year depreciation and the additional section 179 expensing).

**Exclusion for employer-provided adoption assistance.**--The provision corrects an incorrect reference in a technical correction to a provision relating to the exclusion for employer-provided adoption assistance.

**Interest rate for defined benefit plan funding requirements.**--Section 405(c) of the Job Creation and Worker Assistance Act of 2002 increases the interest rate used in determining the amount of unfunded vested benefits for PBGC variable rate premium purposes from 85 percent to 100 percent of the interest rate on 30-year Treasury securities for the month preceding the month in which the applicable plan year begins. The provision makes conforming changes so that this rule applies for purposes of notices and reporting required under Title IV of ERISA with respect to underfunded plans.

### **Amendments to the Economic Growth and Tax Relief Reconciliation Act of 2001**

**Coverdell education savings accounts.**--The provision corrects the application of a conforming change to the rule coordinating Coverdell education savings accounts with Hope and Lifetime Learning credits and qualified tuition programs. The conforming change was made in connection with the expansion of Coverdell education savings accounts to elementary and secondary education expenses in section 401 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

**Rounding rule for retirement plan benefit and contribution limits.**--Section 611 of the Economic Growth and Tax Relief Reconciliation Act of 2001 increases the dollar limits on qualified retirement plan benefits and contributions under Code section 415, and adds a new rounding rule for cost-of-living adjustments to the dollar limit on annual additions to defined contribution plans. This new rounding rule is in addition to a pre-existing rounding rule that applies to benefits payable under defined benefit plans. The provision clarifies that the pre-existing rounding rule applies for purposes of other Code provisions that refer to Code section 415 and do not contain a specific rounding rule.

**SIMPLE plan contributions for domestic or similar workers.**-- Section 637 of the Economic Growth and Tax Relief Reconciliation Act of 2001 provides an exception to the application of the excise tax on nondeductible retirement plan contributions in the case of contributions to a SIMPLE IRA or SIMPLE section 401(k) plan that are nondeductible solely because they are not made in connection with a trade or business of the employer (e.g., contributions on behalf of a domestic worker). Section 637 of that Act did not specifically modify the present-law requirement that compensation for purposes of determining contributions to a SIMPLE plan must be wages subject to income tax withholding, even though wages paid to domestic workers are not subject to income tax withholding. The provision revises the definition of compensation for purposes of determining contributions to a SIMPLE plan to include wages paid to domestic workers, even though such amounts are not subject to income tax withholding.

### **Amendment to the Victims of Terrorism Tax Relief Act of 2001**

**Disclosure of return information in connection with terrorist incident.**--Section 201 of the Victims of Terrorism Tax Relief Act of 2001 permits the IRS to disclose return information (other than taxpayer return information) to law enforcement agencies engaged in the response to or investigation of any terrorist incident, threat, or activity (sec. 6103(i)(7)(A) of the Code). If the taxpayer's identity (name, address, and taxpayer identification number) was provided by the taxpayer or his representative, for example, on a tax return, that information is

taxpayer return information. As a result, the IRS could not identify the person about whom information is being submitted because the identity would be taxpayer return information.

The provision clarifies Code section 6103(i)(7)(A) to permit the disclosure of taxpayer identity in a manner similar to 6103(i)(7)(B)(iv), which permits the disclosure of identity to intelligence agencies as part of the information available to such agencies regarding terrorist activities.

### **Amendment to the Community Renewal Tax Relief Act of 2000**

**Tax treatment of options and securities futures contracts.**-- The provision clarifies that the Secretary of the Treasury has the authority to prescribe regulations regarding the status of an option or a contract the value of which is determined directly or indirectly by reference to an index which becomes (or ceases to be) a narrow-based security index (as defined in Code section 1256(g)(6)). This authority includes, but is not limited to, regulations that provide for preserving the status of such an option or contract as appropriate.

### **Amendments to the Taxpayer Relief Act of 1997**

**Constructive sale exception.**--Section 1001(a) of the Taxpayer Relief Act of 1997 provides an exception from constructive sale treatment for any transaction that is closed before the end of the thirtieth day after the close of the taxable year in which the transaction was entered into, provided certain requirements are met after closing the transaction (Code section 1259(c)(3)). In the case of positions that are reestablished following a closed transaction but prior to satisfying the requirements for the exception from constructive sale treatment, the exception applies in a similar manner if the reestablished position itself is closed and similar requirements are met after closing the reestablished position. The provision clarifies that the exception applies in the same manner to all closed transactions, including reestablished positions that are closed.

**Airline ticket tax.**--Beginning with calendar year 2003, the domestic flight segment portion of the airline ticket tax is adjusted for inflation annually. The provision clarifies that, in the case of amounts paid for transportation before the beginning of the year in which the transportation is to occur, the rate of tax is the rate in effect for the calendar year in which the amount is paid. The provision is effective for segments beginning after December 31, 2002.

### **Amendments to other Acts**

**Taxpayer identification numbers of individuals eligible for the earned income credit.**-- Section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was intended to deny the earned income credit (EIC) to individuals who are not authorized to work in the United States. Specifically, each individual (and, if married, the individual's spouse) and each qualified child is required to include a taxpayer identification number on the tax return. For these purposes, the taxpayer identification numbers are social security numbers issued under a specific section of the Social Security Act. The reference to the Social Security Act is incorrect and does not limit eligibility for the EIC to individuals authorized to work in the United States. The provision corrects the reference to the Social Security Act to limit the EIC to

individuals authorized to work in the United States. The provision is effective for taxable years beginning after the date of enactment.

**Clerical amendments**

The bill makes a number of clerical and typographical amendments to the Code.