

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-02(2)C
Corporation Tax
August 2, 2002

Federal Job Creation and Worker Assistance Act of 2002

This memorandum explains how several provisions of the federal Job Creation and Worker Assistance Act of 2002 (“the Act”) relate to New York State corporation franchise taxes under Articles 9-A, 32, and 33 of the Tax Law. The provisions included in this review are the:

- Establishment of the New York Liberty Zone;
- Special depreciation allowance for certain property under new Internal Revenue Code (IRC) section 168(k), and the special depreciation allowance for qualified New York Liberty Zone property;
- Five-year carryback of net operating losses (NOLs);
- Temporary suspension of the 90 percent alternative minimum tax (AMT) limit; and
- Expansion of the federal Work Opportunity Tax Credit (WOTC) and the effect on New York’s Empire Zone (EZ) and Zone Equivalent Area (ZEA) wage tax credits.

Many of the provisions of the Act are retroactive. For information regarding the filing of amended returns, see the instructions for Forms CT-8, *Claim for Credit or Refund of Corporation Tax Paid*, and CT-9, *Claim for Tentative Refund Based upon Carryback of Net Operating Loss*.

Establishment of the New York Liberty Zone

The Act defines the New York Liberty Zone as 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. The definition of the Liberty Zone is necessary to administer several provisions of the Act, including the special depreciation allowance for qualified New York Liberty Zone property and the expansion of the federal WOTC.

Special Depreciation Allowance for Certain Property and the Special Depreciation Allowance for Qualified New York Liberty Zone Property¹

The Act provides, for federal income tax purposes, a:

- Special depreciation allowance for certain property under new IRC section 168(k);
or

¹Please note that at the time this memorandum was being prepared, the City of New York was authorized to decouple from the federal special depreciation allowance for certain property. Visit the NYC Department of Finance online at www.nyc.gov/finance for more information.

- Special depreciation allowance for qualified New York Liberty Zone property.

Both of the special depreciation allowances provided by the Act allow an additional first-year depreciation deduction equal to 30 percent of the depreciable basis of qualified property. However, there are a number of important differences in the definitions of “qualifying property” under each of the special depreciation allowances. Also, the Act precludes the additional first year special depreciation allowance for qualified New York Liberty Zone property that is eligible for the special depreciation allowance for certain property under new IRC section 168(k). Additionally, when computing federal alternative minimum taxable income (AMTI), no adjustment to the allowable amount of depreciation is required for property to which either allowance applies.

Effect on New York State Corporation Taxes

The special depreciation allowances provided by the Act are allowed in the computation of the entire net income (ENI) base on New York corporation franchise tax returns. The starting point for computing the ENI base for New York corporation franchise taxes under Articles 9-A, 32 or 33 is federal taxable income. The special depreciation allowances provided by the Act for federal income tax purposes are reflected in federal taxable income. New York State Tax Law does not contain any provisions requiring modifications with regard to the special depreciation allowances in the computation of ENI.

In computing minimum taxable income (MTI) for New York State purposes under Article 9-A, the special depreciation allowances are also allowed. The modification for depreciation for property placed in service after 1986 is not required for property that qualifies for either of the special depreciation allowances. The starting point for computing MTI for New York State purposes under Article 9-A is ENI, which includes the special depreciation allowances provided by the Act. For purposes of computing MTI, no adjustment to the allowable amount of depreciation is required for property to which either allowance applies.

Five-year Carryback of Net Operating Losses (NOLs)

The Act temporarily extends, for federal income tax purposes, the general net operating loss (NOL) carryback period from two to five years for certain NOLs arising in taxable years ending in 2001 and 2002. It also provides for an election to disregard the five-year carryback and use the carryback period as it existed prior to the Act.

Effect on New York State Corporation Taxes

A taxpayer taking advantage of the five-year carryback provided by the Act must use a five-year carryback for the purposes of computing the New York State net operating loss deduction under Articles 9-A and 33. Those Articles require taxpayers to use the same carryback period for New York tax purposes as used for federal tax purposes. The five-year carryback period provided by the act also applies when computing the alternative net operating loss deduction (ANOLD) under Article

9-A. The special limitations in sections 208.8-B and 208.9(f) of Article 9-A and 1503(b)(4) of Article 33 still apply in the computation of the allowable New York NOL and ANOLD. NOL carrybacks are not allowed under Article 32.

For more information on the other New York State NOL requirements, see Form CT-8-I, *Instructions for Form CT-8*.

Temporary Suspension of the 90 Percent AMT Limit

The Act provides for the temporary suspension of the 90 percent limit on NOLs in computing federal AMT. In computing AMT, any federal alternative tax NOL deduction attributable to a NOL carried back from, or carried forward to, a tax year ending during 2001 or 2002 is allowed to offset 100% of the federal AMTI, determined without regard to that deduction.

Effect on New York State Corporation Taxes

When computing New York minimum taxable income (MTI), the New York alternative NOL deduction (ANOLD) is limited to 90% of MTI. Tax Law section 208.8-B(d) requires that when carrying back or carrying forward an alternative net operating loss (ANOL), it must be carried out against 90% of MTI (determined without regard to the ANOLD) in each year of application. Section 208.8-B also limits the ANOLD to 90% of MTI (computed without regard to the ANOLD).

Expansion of the WOTC and the Effect on New York's EZ Wage Tax Credit and ZEA Wage Tax Credit

The Act expands the WOTC to treat New York Liberty Zone business employees as members of a targeted group for purposes of section 51 of the IRC. In addition, the WOTC, which was scheduled to expire on December 31, 2001, was extended by the Act for two years, through December 31, 2003.

As defined in the Act, a New York Liberty Zone business means any trade or business located in the New York Liberty Zone, or relocated elsewhere in New York City from the New York Liberty Zone, as a result of the physical destruction or damage of such place of business by the September 11, 2001, terrorist attack. A trade or business is not a New York Liberty Zone business for any taxable year in which such trade or business employed an average of more than 200 employees on business days during the taxable year.

A New York Liberty Zone business employee means, with respect to any period, an employee of a New York Liberty Zone business if substantially all the services performed by the employee for the business during the period are performed in the New York Liberty Zone. In general, in the case of a qualified New York Liberty Zone business that is located in New York City but outside of the New York Liberty Zone, an employee is considered a New York Liberty Zone business employee if substantially all of the services performed during the period by the employee for the business are performed in New York City.

The federal provisions apply to taxable years ending after December 31, 2001.

Effect on New York State Corporation Taxes

New York Liberty Zone business employees, as added by the Act and defined in new Section 1400L of the IRC, may be considered targeted employees for purposes of the EZ wage tax credit and ZEA wage tax credit for taxable years ending on or after January 1, 2001 (see below for additional requirements for targeted status).

In order to claim either the EZ wage tax credit or the ZEA wage tax credit, the employer must be certified under Article 18-B of the General Municipal Law and meet certain eligibility requirements, including an employment test.

A qualified employer can treat New York Liberty Zone employees as targeted employees for the EZ wage tax credit and ZEA wage tax credit if all of the following conditions are met:

- the employee is a resident of New York State;
- the employee received EZ or ZEA wages during the period for which the credit is being claimed; and
- the employee was a member of a federal targeted group at the time of initial employment in the job for which the EZ wage tax credit or ZEA wage tax credit is being claimed.

If the employee is considered a targeted employee for the purposes of computing the EZ wage tax credit or ZEA wage tax credit, the employer may be entitled to the maximum credit of \$3,000 for the employee.

For additional information on these credits, please see the instructions for Forms CT-601, *Claim for EZ Wage Tax Credit*, and CT-601.1, *Claim for ZEA Wage Tax Credit*.