



# CCH Tax Briefing: STATE REACTION TO THE FEDERAL JOB CREATION AND WORKER ASSISTANCE ACT

## Special Report

October 28, 2002

### JCWA'02 ScoreCard

#### 30 Percent Bonus Depreciation:

- ✓ Conforming States: 13
- ✓ Nonconforming States: 25\*
- ✓ Special Situations: 10

#### Enhanced Net Operating Loss Carryback:

- ✓ Conforming States: 7
- ✓ Nonconforming States: 41\*

#### Estimated Revenue Impact:

- ✓ JCWA Federal Tax Breaks To '05: \$123 Billion
- ✓ JCWA State Tax Breaks to '05: \$20 Billion
- ✓ Nonconformity To JCWA to '05: \$10 Billion Lost

#### Other State-Sensitive "Problem Provisions:"

- ✓ S Corporation Discharge of Indebtedness
- ✓ Deduction for Teacher Supplies

\* Includes District of Columbia

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**O**n March 9, 2002, President Bush signed the Job Creation and Worker Assistance Act of 2002 (JCWA), a major tax bill with many important provisions affecting both businesses and individuals. The law made several tax breaks retroactive to the 2001 tax year, affecting 2001 tax returns that had already been filed or were about to be filed. Since most states use the Internal Revenue Code as the base for their state income taxes, the federal cuts threaten to seriously reduce state revenues. The threatened reduction has sparked a wide range of reactions by state legislatures and tax officials, varying from partial or postponed acceptance of all or some of the new tax breaks to their complete acceptance or rejection. These reactions are examined—state by state—in this CCH Tax Briefing.

### INCENTIVES WITH DIRECT STATE IMPACT

Businesses receive the lion's share of the tax breaks under JCWA'02, the new federal law. Two of the breaks, a temporary 30% depreciation "bonus" and a five-year carryback period for net operating losses (NOLs), apply retroactively to affect 2001 tax returns. One major incentive that affects individuals rather than businesses is the teacher's deduction for qualified classroom expenses. All three federal tax incentives create a potential and significant revenue drain for most states.

**Depreciation "bonus":** This JCWA provision allows taxpayers an additional first-year depreciation deduction equal to 30% of the adjusted basis of qualified property. The 30% "bonus" depreciation is allowable for regular and al-

ternative minimum tax (AMT) purposes for the tax year in which the property is placed in service.

Property eligible for this special treatment includes (1) property with a recovery period of 20 years or less, (2) water utility property, (3) non-IRC Sec. 197 computer software, or (4) qualified leasehold improvements.

Generally, qualifying property must be new and acquired after September 10, 2001, and before September 11, 2004. Once purchased, the property must be placed in service generally before January 1, 2005. The basis of the property and the depreciation allowances in the year of purchase and in later years must be adjusted to reflect the additional first-year depreciation deduction.

**Impact** *Businesses in states that chose not to conform to this federal provision may find themselves burdened with the requirement to keep multiple sets of books on the current cost basis for each asset they own: one for regular federal tax purposes, one for federal alternative minimum tax purposes, another for financial accounting purposes, and still another for state tax purposes.*

**NOLs:** Federal taxpayers generally can carry back NOLs two years. The new law temporarily extends that general carryback period from two to five years. In addition, three-year NOLs, such as casualty losses, can also be carried back five years.

This enhanced federal carryback is temporary. It applies only to losses that arise in tax years ending in 2001 and 2002. Taxpayers are given one opportu-

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nity to elect out of this treatment and their election is final. The new law also allows a taxpayer's NOL deduction to reduce its alternative minimum taxable income (AMTI) up to 100%.

**Teachers:** Under JCWA, teachers may now take an above-the-line deduction for classroom expenses. This allows virtually all teachers who buy classroom supplies out of their own pockets a federal tax deduction, even without "itemizing" other deductions. Educators, in elementary and secondary schools, may deduct qualifying classroom expenses up to \$250 annually for 2002 and 2003. Qualifying expenses include supplies, books, software and equipment.

## DISCHARGE OF INDEBTEDNESS GIVEBACK

In *Gitlitz v. Commissioner*, 531 U.S. 206 (2001), the U.S. Supreme Court relied on the plain language of the IRC to hold that while IRC §108(a) provides that discharge of indebtedness income (DOI) ceases to be included in gross income when the S corporation is insolvent, it does not provide that the DOI ceases to be an item of income for purposes of allowing the shareholder an increase in basis that in turn can allow the pass-through of otherwise suspended corporate losses.

The new law reverses the High Court's decision. The discharged amount excluded from an S corporation's income is expressly not treated as an item of income by a shareholder. Consequently, the shareholder's basis is not increased. Generally, P.L. 107-147 applies to discharges of indebtedness after October 11, 2001.

## STATES' POSITIONS

With a majority of the states having concluded their legislative sessions for 2002, the response from the states to the impact of the stimulus bill has varied greatly, ranging from inaction, to

affirmative acceptance of the federal changes, to legislative and administrative action to negate the impact on state revenues. Here's a rundown of state action in response to JCWA.

**Alabama:** The Alabama Department of Revenue announced that it will follow changes made by JCWA where the Code of Alabama contains a direct reference to the Internal Revenue Code.

Alabama taxpayers will receive a special 30% "bonus" depreciation tracking JCWA. Taxpayers who filed 2001 state income tax returns before June 1, 2002, and did not claim the "bonus" deprecia-

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tion allowance may claim the "bonus" by filing an amended return. Taxpayers may elect not to claim the "bonus" depreciation by including a statement with their return. Generally, the election must be made by the due date of the return, including extensions. Taxpayers are deemed to have elected *not* to claim the "bonus" for a return filed before June 1, 2002, on which the taxpayer claimed depreciation, but did not claim the special depreciation allowance and for which the taxpayer did not file an amended return to claim the allowance before April 15, 2003.

Alabama will also follow federal changes relating to the discharge of S corporation indebtedness and the new federal deduction for out-of-pocket classroom expenses for professional educators.

**Caution.** *Alabama will not follow federal changes concerning the increase to the NOL carryback period because Alabama law is not tied to those federal provisions.*

**Alaska:** Alaska adopts the "current" IRC for corporate income tax purposes, as amended, and has not announced administrative or legislative proposals to vary from the provisions of the stimulus package.

**Arizona:** Arizona generally adopts the IRC as amended and in effect on March 9, 2002, including those provisions that became effective during 2001 with the specific adoption of all federal retroactive dates, but excluding any change to the IRC enacted after March 9, 2002.

Arizona has *not* adopted JCWA's 30% depreciation "bonus." An Arizona taxpayer that took the "bonus" depreciation for federal income tax purposes must add back the amount taken for Arizona income tax purposes. However, a subtraction in the amount of three-sevenths of the amount of depreciation is allowed in computing Arizona adjusted gross income.

A subtraction is also allowed for the amount of depreciation that would have been allowed without regard to the "bonus" depreciation to the extent that the amount has not already reduced Arizona taxable income in the current or prior taxable years if an asset that has had "bonus" depreciation applied is sold or disposed of during the taxable year.

**Arkansas:** The 30% "bonus" depreciation deduction allowed under JCWA is inapplicable for Arkansas income tax purposes as Arkansas has not adopted those provisions. Arkansas taxpayers must continue to file returns using depreciation and expensing of property provisions found in IRC Secs. 167, 168, 179, and 179A, as in effect on January 1, 1999. The General Assembly, not in session in 2002, would have to enact a new stat-

ute incorporating the federal provisions before the depreciation “bonus” would apply in Arkansas.

**California:** Although California does not utilize federal depreciation or NOL provisions, California has conformed with the provision of JCWA that disallows S corporation shareholders a deduction for suspended losses after the corporation realizes exempt cancellation of indebtedness income. California has not issued any administrative guidance to taxpayers regarding the JCWA.

**Colorado:** Colorado adopts the “current” IRC for corporate income tax purposes, as amended, and has not announced administrative or legislative proposals to vary from the provisions of the stimulus package.

**Connecticut:** Connecticut has not enacted JCWA’s 30% “bonus” depreciation.

**Delaware:** The provisions of JCWA will automatically be adopted for Delaware corporate and personal income tax purposes unless decoupling legislation is enacted. As of July 5, 2002, no decoupling legislation was pending.

**District of Columbia:** An Emergency Act decoupled the District of Columbia from the 30% “bonus” depreciation provision of JCWA. The Emergency Act was effective April 24, 2002, for a 90-day period expiring on July 23, 2002.

The District subsequently extended the decoupling for an additional 225-day period expiring March 5, 2003.

**Florida:** Florida adopted the provisions of JCWA. However, JCWA’s extension of the carryback period for net operating losses (NOLs) occurring in tax years ending in 2001 and 2002 from two to five years does not affect Florida corporate income taxpayers. Florida does not allow for the carryback of NOLs.

**Georgia:** For purposes of Georgia income taxes, any reference to the Internal Revenue Code refers to the IRC of 1986 as it existed on January 1, 2002. Since JCWA was enacted on March 9,

2002, Georgia does not adopt these provisions. Accordingly, differences between the federal and the Georgia corporate income and personal income tax laws will require adjustments to 2001 Georgia income tax returns.

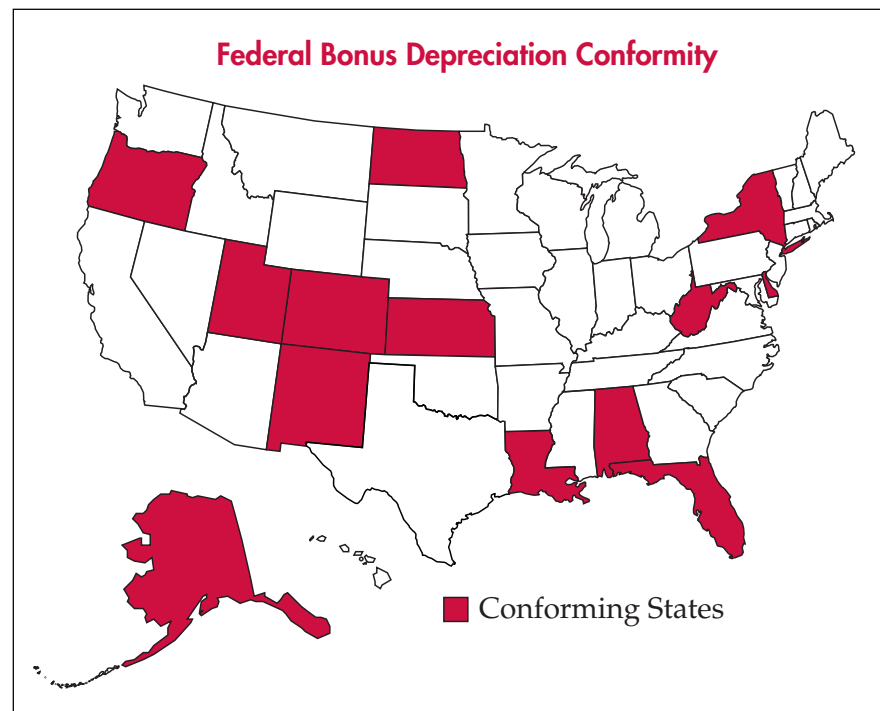
**Hawaii:** Hawaii corporate and personal tax laws have not been conformed to IRC changes made by JCWA. S.B. 2824 conforms Hawaii corporate income tax and personal income tax laws to the IRC as amended to December 31, 2001. However, JCWA was signed into law on March 9, 2002, and did not amend the IRC as of December 31, 2001. Therefore, Hawaii does not conform to IRC changes made by JCWA for the 2001 tax year and will not conform to those changes for subsequent years unless the Hawaii legislature amends the law to specifically include the JCWA provisions. Taxpayers claiming the additional federal deductions allowed under JCWA must adjust the taxable income reported on their state returns.

To adjust for the 30% depreciation “bonus,” a Hawaii taxpayer must (1) complete federal Form 4562 or federal Form 2106, whichever is ap-

plicable, for Hawaii tax purposes using the federal depreciation guidelines in effect before adoption of JCWA; (2) attach the completed federal form to the Hawaii tax return; (3) make the necessary adjustments to the Hawaii return for the depreciation difference between federal and Hawaii; and (4) attach to the Hawaii return any worksheet showing the computation of the adjustments.

**Caution.** *A taxpayer who filed federal and Hawaii returns claiming “bonus” depreciation must file an amended Hawaii return that does not claim “bonus” depreciation. To adjust for the federal five-year carryback of a net operating loss (NOL) under IRC Sec. 172(b), a Hawaii taxpayer with an NOL in a tax year ending in 2001 or 2002 may carry back the NOL for only two years for Hawaii purposes.*

To adjust for the federal treatment of discharges of indebtedness of S corporations under IRC Sec. 108(d), an S corporation shareholder may increase



the basis in the shareholder's stock for Hawaii purposes.

**Idaho:** The State Tax Commission has advised taxpayers that the 30% "bonus" depreciation of JCWA will not apply for Idaho income tax purposes. Because the Idaho legislature adopted the IRC as of January 1, 2002 before the amendments were made by JCWA, the "bonus" depreciation does not apply for Idaho income taxes. Taxpayers that filed an Idaho return based on the increased depreciation are instructed to file an amended Idaho return.

**Illinois:** Illinois does not conform to the 30% "bonus" depreciation provisions of JCWA. An Illinois taxpayer that took the "bonus" depreciation for federal income tax purposes must add back the amount taken for Illinois income tax purposes. However, a subtraction in the amount of three-sevenths of the amount of depreciation is allowed in computing Illinois adjusted gross income.

A subtraction is also allowed for the amount of depreciation that would have been allowed without regard to the "bonus" depreciation, to the extent that the amount has not already reduced Illinois taxable income in the current or prior taxable years, if an asset that has had "bonus" depreciation applied is sold or disposed of during the taxable year.

**Indiana:** The Department of Revenue has announced that the retroactive provisions of JCWA, which are reflected in federal adjusted gross income, will not be incorporated into the computation of Indiana adjusted gross income for tax year 2001 because of the retroactive effective date and because JCWA was signed after January 1, 2002. As a result, taxpayers may have to make adjustments and attach a separate statement to their Indiana tax return if the deductions impacted by the Act were reflected in their federal adjusted gross incomes. If JCWA deductions were not reflected in the federal adjusted gross income, no adjustments are necessary.

**Iowa:** Under current law, Iowa has adopted the IRC as of January 31, 2002, reflecting changes enacted in 2001 but not changes enacted in 2002. The Department of Revenue and Finance has advised that the 30% depreciation "bonus," the extended NOL carrybacks, and the teacher out-of-pocket deduction for classroom expenses will not apply for Iowa taxpayers.

The Department of Revenue and Finance has indicated it is developing its own depreciation form and noted that the state legislature may recouple the classroom expense deduction for the 2002 and 2003 tax years.

**Kansas:** A proposed bill (H.B. 3037) in the state legislature would require that JCWA's 30% depreciation "bonus" be added back to adjusted gross income in determining Kansas taxable income for corporate income tax or personal income tax purposes. The legislature did not act on the proposed bill before its session adjourned on May 31, 2002.

**Kentucky:** Kentucky updated its IRC conformity to the IRC in effect on December 31, 2001, exclusive of any amendments made after that date, other than amendments that extend provisions in effect on December 31, 2001, that would otherwise terminate. Accordingly, changes made to the IRC by JCWA do not apply to Kentucky income tax returns.

The Revenue Cabinet has advised taxpayers that they will have to make an adjustment on their Kentucky return to reflect the differences in allowable deductions. Taxpayers do not need to adjust their Kentucky return if they filed it before March 10, 2002, or if the new provisions do not apply to their federal return. The Revenue Cabinet will provide instructions on how to adjust for depreciation and other differences in an upcoming release.

**Louisiana:** Because there is no specific corporate income tax modification provided under Louisiana law for depreciation allowed on the federal re-

turn, JCWA's "bonus" depreciation will be allowed for Louisiana corporate income tax purposes.

*Caution. Louisiana specifically disallows federal NOLs for corporate income tax taxpayers and the extended NOL carryback under JCWA is not allowed for Louisiana purposes.*

**Maine:** Maine has enacted conformity legislation adopting the IRC as of March 15, 2002. The law specifically does not adopt the extended NOL carryback provision. Additionally, the law provides that "bonus" depreciation claimed for tax years beginning in 2002 may be reduced based on the amount of funding in the Tax Conformity Reserve account. No modification of depreciation is mandated for "bonus" depreciation claimed for tax year 2001.

**Maryland:** Maryland has decoupled the 30% depreciation "bonus" and the NOL extension.

**Massachusetts:** The 30% "bonus" depreciation deduction under JCWA is not allowed in figuring taxable income for Massachusetts corporate excise (income), personal income, financial institution excise (income), and utility franchise tax purposes.

**Michigan:** Michigan taxpayers are allowed the 30% depreciation "bonus" in computing the federal taxable income amount that is the tax base for the Single Business Tax. However, the federal depreciation deduction must be added to federal taxable income for purposes of determining Michigan tax base.

**Minnesota:** The Minnesota omnibus tax bill conformed the definition of "net income" to the federal definition under the provisions of JCWA. The 30% depreciation "bonus" is subject to an 80% add-back provision, and the add-back amount is allowed as a subtraction for the five tax years following the add-back, effective for corporate franchise (in-

come) and personal income tax years ending after September 10, 2001.

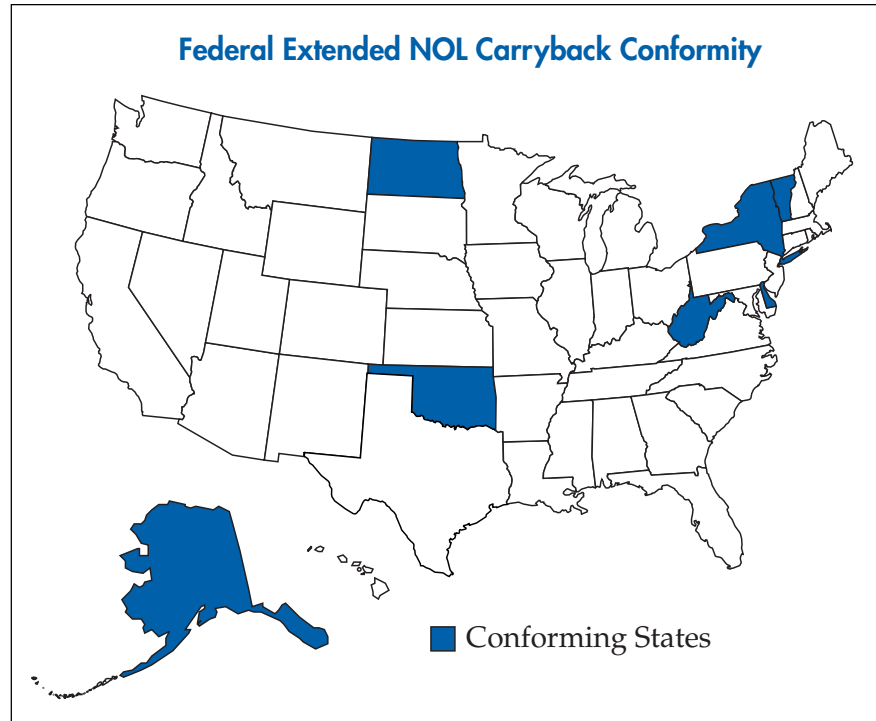
**Mississippi:** The Commissioner of the State Tax Commission has determined that the 30% depreciation “bonus” in JCWA is not a reasonable allowance for exhaustion, wear and tear, and obsolescence of property. If the “bonus” is taken for federal purposes, an adjustment will be required to clearly reflect the depreciation that otherwise would have been allowed using other federal depreciation guidelines.

**Caution.** *Mississippi’s NOL provisions and do not conform to the IRC. For tax years ending after 1997 and before 2002, NOLs are treated the same as under the IRC as in effect at the tax year end or on December 31, 2000, whichever is earlier. For tax years ending after 2001, NOLs may be carried back two years and carried forward 20 years.*

**Missouri:** Missouri has partially decoupled from JCWA. The 30% depreciation “bonus” is not allowed for Missouri corporate and personal income tax purposes to the extent that the amount deducted relates to property purchased between July 1, 2002, and June 30, 2003. In addition, Missouri decoupled from the NOL extension.

**Montana:** Montana specifically adopts IRC Sec.167 without specifically referencing IRC Sec.168. However, it has been the state’s longstanding practice to follow IRC Sec.168 treatment if that is the method chosen by the taxpayer.

**Nebraska:** Corporations must increase federal taxable income by 85% of any “bonus” depreciation deduction claimed under JCWA. Eighty-five percent of “bonus” depreciation deducted on a tax year 2000 or 2001 federal income tax return should be entered as an “other adjustment” on line 5 (for 2000 returns) or line 6 (for 2001 returns), Nebraska Schedule A,



Form 1120N. If an original Nebraska Form 1120N has already been filed, the increase should be reported on an amended Nebraska return, Form 1120XN. For a corporation with a unitary business having activity both inside and outside Nebraska, federal taxable income should be increased by the full amount of “bonus” depreciation received, and the increase should be apportioned to Nebraska in the same manner as income. The total amount of “bonus” depreciation added back to federal taxable income for Nebraska purposes may be subtracted in later tax years.

**Nevada:** Nevada does not impose a corporate income tax.

**New Hampshire:** The 30% depreciation “bonus” is not allowed for New Hampshire business profits (income) tax purposes. Unless the New Hampshire legislature changes course, taxpayers must file their 2001 tax returns using the provisions of the IRC in effect on December 31, 2000. Taxpayers can: (1) file now and add back the difference between the depreciation and the IRC Sec. 179 expense allowed

under the pre- March 2002 IRC and the depreciation and expense claimed on the 2001 federal return; (2) file an extension for the New Hampshire return using the instructions and forms that will be available on the Department of Revenue Administration’s website; (3) download a copy of the updated 2001 Business Tax Return with the adjustment schedule and instructions from the Department’s website prior to reporting gross business profits; or (4) if the 2001 return has already been filed using the 30% “bonus” depreciation or the additional IRC Sec. 179 expense, file an amended return following the first or third options listed above.

**New Jersey:** The New Jersey tax restructuring bill disallows JCWA’s 30% depreciation “bonus.” The bill returns New Jersey’s depreciation rules to how they stood before enactment of JCWA, and gives the Division of Taxation authority to formulate rules and regulations to carry out the decoupling from federal law, including the necessary basis adjustments.

**New Mexico:** New Mexico adopts

the “current” IRC for corporate income tax purposes, as amended, and has not announced administrative or legislative proposals to vary from the provisions of the stimulus package.

**New York:** The 2002-2003 New York budget bills maintain New York’s link to the 30% “bonus” depreciation allowance of JCWA. New York also follows the federal extended NOL carryback provision, but the carryback is limited to \$10,000 per year.

**North Carolina:** North Carolina has decoupled from JCWA “bonus” depreciation. A North Carolina taxpayer that claimed a 30% bonus depreciation deduction for federal income tax purposes in a taxable year before 2002 must add back the amount of that deduction in the first taxable year beginning on or after January 1, 2002, in determining North Carolina net and taxable income. Furthermore, a taxpayer must add back 100% of the “bonus” depreciation deduction claimed for federal income tax purposes in taxable year 2002, and 70% of that claimed in taxable year 2003.

*Caution. Extension of the NOL carryback period does not affect North Carolina corporate taxpayers because North Carolina does not follow federal NOL provisions for corporate income tax purposes.*

**North Dakota:** North Dakota adopts the “current” IRC for corporate income tax purposes, as amended, and has not announced administrative or legislative proposals to vary from the provisions of the stimulus package.

**Ohio:** Ohio decoupled its corporation franchise (income) tax and personal income tax from the JCWA provisions allowing the 30% depreciation “bonus.” Ohio taxpayers are required to add-back 5/6 of the amount of “bonus” depreciation deduction taken for federal purposes. Taxpayers are then allowed to claim the 5/6 in equal amounts over the next five tax years. Provisions are also included for allo-

ating and apportioning the add-back and five-year deduction, treatment of the add-back and deduction for pass-through entities, and an election for corporations to apply the provisions to the 2003 tax report.

**Oklahoma:** Oklahoma has partially decoupled from JCWA’s “bonus” depreciation provisions. Oklahoma requires that taxpayers add back 80% of the amount of “bonus” depreciation deduction taken for federal purposes. Taxpayers are then allowed to claim the 80% in equal amounts over the next four tax years. Taxpayers subject to apportionment must apportion the add-back in the same manner as income is apportioned. Taxpayers that have filed, or will file a return prior to October 1, 2002, that does not add back the 80% of “bonus” depreciation must file an amended return reflecting the add back before July 1, 2003.

**Oregon:** Oregon taxpayers will be able to take advantage of JCWA because Oregon tax law is automatically tied to any provision that is part of the federal definition of “taxable income.” Taxpayers will be able to take the 30% “bonus” depreciation deduction and the classroom expense deduction. However, individual taxpayers will not be able to claim the extended NOL carryback period. The Department of Revenue now takes the position that the Internal Revenue Code as it existed on December 31, 2001, applies to 2001 NOLs for Oregon personal income tax purposes, and that the carryback period is two years. The Department had previously said that the five-year carryback period would apply for tax year 2001.

*Caution. Corporate taxpayers are not allowed to carry back NOLs.*

Although Oregon is statutorily tied to these changes, the legislature could disconnect from the automatic tying provision. The legislature is currently holding its second special session of the

year. H.B. 4050 would require an add-back of the “bonus” depreciation.



**Comment** Amendments to H.B. 4050 later removed the add-back language.

**Pennsylvania:** For corporate income tax purposes, Pennsylvania has decoupled the 30% depreciation “bonus” in JCWA. A Pennsylvania taxpayer that took the “bonus” depreciation for federal income tax purposes must add back the amount taken for Pennsylvania income tax purposes. However, a subtraction in the amount of three-sevenths of the amount of depreciation is allowed in computing Pennsylvania adjusted gross income.

A subtraction is also allowed for the amount of depreciation that would have been allowed without regard to the “bonus” depreciation, to the extent that the amount has not already reduced Pennsylvania taxable income in the current or prior taxable years, if an asset that has had “bonus” depreciation applied is sold or disposed of during the taxable year.

**Rhode Island:** The state budget bill decoupled Rhode Island business corporation (income) tax, bank excise (income) tax, and personal income tax provisions from both the 30% “bonus” depreciation and the NOL carryback provisions of JCWA

**South Carolina:** For South Carolina corporate and personal income tax purposes, the state adopts the Internal Revenue Code as amended through December 31, 2001. Accordingly, the provisions of JCWA are not adopted.

**South Dakota:** South Dakota does not have a corporate income tax but does impose a financial institutions franchise tax. While the state conforms to the IRC, as of a date prior to JCWA, it allows an additional depreciation subtraction for the excess of the state undepreciated tax basis over the federal depreciable basis.

**Tennessee:** Tennessee has decoupled from the 30% “bonus” depreciation provisions of JCWA. Taxpayers are required to add-back the deprecia-

## STATE LAW REFERENCES TO JCWA'02 PROVISIONS

**Alabama**

*Recent Federal Changes Affecting Alabama's Income Tax Laws*, Alabama Department of Revenue, June 10, 2002

**Arizona**

H.B. 2712, Laws 2002

**Arkansas**

*Arkansas State Revenue Quarterly*, Revenue Division of the Arkansas Department of Finance and Administration, April-June 2002

**California**

Chs. 34 (S.B. 657) and 35 (A.B. 1122), Laws 2002

**Connecticut**

Bill No. 6002, May 9, 2002 Special Session, Laws 2002; *Special Notice* 2002 (14), Connecticut Department of Revenue Services, September 13, 2002

**Delaware**

*News and Items of Interest*, State of Delaware Department of Finance Division of Revenue, July 5, 2002

**District of Columbia**

D.C.A. 14-341, Laws 2002; D.C.A. 14-175, Laws 2002

**Florida**

S.B. 18-E, Laws 2002

**Georgia**

H.B. 1026, Laws 2002

**Hawaii**

*Announcement* No. 2002-4, Hawaii Department of Taxation, May 14, 2002; *Announcement* No. 2002-15, Hawaii Department of Taxation, July 3, 2002

**Idaho**

*Press Release*, Idaho State Tax Commission, March 25, 2002; *Bonus Depreciation News*, Idaho State Tax Commission Website, March 28, 2002

**Illinois**

S.B. 1543, Laws 2002; *Information Bulletin* FY 2003-02, Illinois Department of Revenue, August 2002

**Indiana**

*News Release*, Indiana Department of Revenue, March 22, 2002

**Iowa**

H.F. 2116, Laws 2002; *Press Release*, Iowa Department of Revenue and Finance, June 3, 2002

**Kansas**

*Minutes*, Kansas House Committee on Taxation, April 4, 2002

**Kentucky**

H.B. 457, Laws 2002; *News Release*, Kentucky Revenue Cabinet, March 25, 2002

**Louisiana**

*Revenue Ruling* No. 02-009, Louisiana Department of Revenue, August 26, 2002

**Maine**

Ch. 559 (H.B. 1574), Laws 2002

**Maryland**

*Comptroller's Guidelines Regarding S.B. 323*, Maryland Comptroller of the Treasury, June 2002

**Massachusetts**

Ch. 96 (H.B. 5006), Laws 2002; *Technical Information Release* 02-11, Massachusetts Department of Revenue, August 1, 2002

**Minnesota**

Ch. 377 (H.F. 2498), Laws 2002

**Mississippi**

Mississippi State Tax Commission Website, March 27, 2002; *Reg. 504*, Mississippi State Tax Commission

**Missouri**

S.B. 1248, Laws 2002

**Nebraska**

*Revenue Ruling* No. 24-02-1, Nebraska Department of Revenue, May 3, 2002

**New Hampshire**

*TIR*, 2002-002, New Hampshire Department of Revenue Administration, April 15, 2002

**New Jersey**

A.B. 2501, Laws 2002

**New York**

*Press Release*, New York Governor's Office, May 15, 2002

**North Carolina**

Ch. 126 (S.B. 1115), Laws 2002

**Ohio**

S.B. 261, Laws 2002; *Corporation Franchise Tax Information Release* CFT 2002-01, Ohio Department of Taxation, July 31, 2002

**Oklahoma**

Ch. 503 (S.B. 1415), Laws 2002

**Oregon**

*Notice*, Oregon Department of Revenue, April 29, 2002; Oregon Legislative Assembly Website, July 6, 2002

**Pennsylvania**

H.B. 1848, Laws 2002

**Rhode Island**

Ch. 65 (H.B. 7732), Laws 2002

**South Carolina**

H.B. 4695, Rat. 255, Laws 2002

**Tennessee**

Ch. 856 (S.B. 3110), Laws 2002

**Texas**

*Document* No. 200203898L, Texas Comptroller of Public Accounts, March 25, 2002; *Document* No. 200204014L, Texas Comptroller of Public Accounts, April 26, 2002

**Utah**

*Minutes of Meeting*, Utah Revenue and Taxation Interim Com-

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**FEDERAL BONUS DEPRECIATION CONFORMITY**

The federal Job Creation and Worker Assistance Act of 2002 gave taxpayers an additional first-year depreciation deduction equal to 30% of the adjusted basis of qualified property. The state response has varied. (Listings as of 7/8/02)

**Conforming States**

The following states allow the bonus depreciation for state corporate income tax purposes.

<i>Alabama</i>	<i>Kansas</i>	<i>Oregon</i>
<i>Alaska</i>	<i>Louisiana</i>	<i>Utah</i>
<i>Colorado</i>	<i>New Mexico</i>	<i>West Virginia</i>
<i>Delaware</i>	<i>New York</i>	
<i>Florida</i>	<i>North Dakota</i>	

**Nonconforming States**

The following states do not allow the bonus depreciation for state corporate income tax purposes.

<i>Arizona</i>	<i>Indiana</i>	<i>Pennsylvania</i>
<i>Arkansas</i>	<i>Iowa</i>	<i>Rhode Island</i>
<i>California</i>	<i>Kentucky</i>	<i>South Carolina</i>
<i>Connecticut</i>	<i>Maryland</i>	<i>Tennessee</i>
<i>District of Columbia</i>	<i>Massachusetts</i>	<i>Vermont</i>
<i>Georgia</i>	<i>Mississippi</i>	<i>Virginia</i>
<i>Hawaii</i>	<i>Missouri</i>	<i>Wisconsin</i>
<i>Idaho</i>	<i>New Hampshire</i>	
<i>Illinois</i>	<i>New Jersey</i>	

**States with Special Situations**

*Nevada, Washington, and Wyoming* do not impose a corporate income tax.

*Maine* will allow the bonus depreciation for 2001. However, for tax years beginning in 2002, the bonus depreciation may be reduced based on the amount of funding in the Tax Conformity Reserve account.

*Michigan* allows the bonus depreciation deduction in computing the federal taxable income amount that is the tax base for the Single Business Tax. However, the federal depreciation deduction must be added to federal taxable income for purposes of determining the Michigan tax base.

*Minnesota* will allow the bonus depreciation subject to an 80% addback provision, and the addback amount is allowed as a subtraction for the five tax years following the addback, effective for tax years ending after September 10, 2001.

*Montana* specifically adopts IRC §167 without specifically referencing §168. However, it has been the state's longstanding practice to follow §168 treatment if that is the method chosen by the taxpayer.

*Nebraska* requires that 85% of any bonus depreciation be added back. The amount may later be deducted over five years beginning with tax year 2005.

*North Carolina* requires that bonus depreciation taken in 2001 be added back in the first taxable year beginning on or after January 1, 2002. Additionally, 100% of the bonus depreciation claimed in taxable year 2002, and 70% of that claimed in taxable year 2003 must also be added back.

*Ohio* requires taxpayers to add back 5/6 of the amount of bonus depreciation taken for federal purposes. Taxpayers may deduct the add-back amount in equal installments over the following five tax years.

*Oklahoma* requires taxpayers to add back 80% of the federal bonus depreciation, which can then be claimed in equal amounts over the next four years.

*South Dakota* does not have a corporate income tax but does impose a financial institutions franchise tax. The state conforms to the IRC as of a date prior to P.L. 107-147 but allows an additional depreciation subtraction for the excess of the state undepreciated tax basis over the federal depreciable basis.

*Texas* generally does not allow bonus depreciation because it adopts the IRC in effect for the federal tax year beginning on or after January 1, 1996, and before January 1, 1997. However, for corporations that qualify and elect to use the FIT (federal income tax) method of reporting taxable capital (including S corporations, close corporations with not more than 35 shareholders, and corporations with taxable capital of less than \$1 million), the bonus depreciation will be allowed as long as the same method was used in the corporation's most recent federal income tax return.

## FEDERAL EXTENDED NOL CARRYBACK CONFORMITY

The federal Job Creation and Worker Assistance Act of 2002 (P.L. 107-147) extends the net operating loss (NOL) carryback from two years to five years for NOLs arising in 2001 and 2002. The full amount of NOLs arising in or carried forward to 2001 and 2002 can be used to reduce the alternative minimum tax. The state response has varied. (Listings of 7/08/02)

### Conforming States

The following states incorporate the extended carryback period for state corporate income tax purposes either because they automatically conform to the current federal NOL provisions or they have enacted legislation conforming as of a date subsequent to enactment of P.L. 107-147.

<i>Alaska</i>	<i>Oklahoma</i>
<i>Delaware*</i>	<i>Vermont</i>
<i>New York*</i>	<i>West Virginia*</i>
<i>North Dakota</i>	

\*Although *Delaware*, *New York*, and *West Virginia* incorporate the extended NOL carrybacks, they limit the amount that may be carried back. Delaware limits NOL carrybacks to \$30,000 and New York limits NOL carrybacks to \$10,000 per year. West Virginia limits NOL carrybacks to \$300,000.

### Nonconforming States

The following states do not allow the extended NOL carryback for state corporate income tax purposes, either because they do not conform to federal NOL carryback provisions or they conform as of a date prior to enactment of P.L. 107-147.

<i>Alabama</i>	<i>Kansas</i>	<i>New Mexico</i>
<i>Arizona</i>	<i>Kentucky</i>	<i>North Carolina</i>
<i>Arkansas</i>	<i>Louisiana</i>	<i>Ohio</i>
<i>California</i>	<i>Maine</i>	<i>Oregon</i>
<i>Colorado</i>	<i>Maryland</i>	<i>Pennsylvania</i>
<i>Connecticut</i>	<i>Massachusetts</i>	<i>Rhode Island</i>
<i>District of Columbia</i>	<i>Michigan</i>	<i>South Carolina</i>
<i>Florida</i>	<i>Minnesota</i>	<i>South Dakota</i>
<i>Georgia</i>	<i>Mississippi</i>	<i>Tennessee</i>
<i>Hawaii</i>	<i>Missouri</i>	<i>Texas</i>
<i>Idaho</i>	<i>Montana</i>	<i>Utah</i>
<i>Illinois</i>	<i>Nebraska</i>	<i>Virginia</i>
<i>Indiana</i>	<i>New Hampshire</i>	<i>Wisconsin</i>
<i>Iowa</i>	<i>New Jersey</i>	

### States with Special Situations

*Nevada*, *Washington*, and *Wyoming* do not impose a corporate income tax.

## STATE LAW REFERENCES CONTINUED

mittee, May 22, 2002; *Agenda*, Utah Revenue and Taxation Interim Committee, June 19, 2002

### Vermont

Ch. 140 (H.B. 753), Laws 2002; *News Release*, Vermont Department of Taxes, June 2002

### Virginia

*Tax Bulletin*, No. 02-3, Virginia Department of Taxation, April 8, 2002

### West Virginia

S.B. 1008 and 1009, Laws 2002

### Wisconsin

Act 109 (A.B. 1), Laws 2002; *Tax Bulletin* No. 131, Wisconsin Department of Revenue, August 2002

tion deducted for federal purposes and may then subtract the depreciation they would have been entitled to deduct under IRC Sec. 168 as it existed prior to amendment by the federal Act.

**Texas:** Because Texas adopted the IRC in effect for the federal tax year beginning on or after January 1, 1996, and before January 1, 1997, it does not conform to the provisions of JCWA.



Corporations that qualify and elect to use the FIT

(federal income tax) method of reporting taxable capital (including S corporations, close corporations with not more than 35 shareholders, and corporations with taxable capital of less than \$1 million), the “bonus” depreciation will be allowed as long as the same method was used in the corporation’s most recent federal income tax return.

**Utah:** A Utah legislative interim committee has tabled proposed tax revision legislation that would have decoupled Utah tax laws from the 30% “bonus” depreciation provision of JCWA. The tabled legislation did not appear on the agenda for the June 19, 2002, committee meeting and the committee is not scheduled to meet again until September 18, 2002.

**Vermont:** Vermont does not allow JCWA’s 30% depreciation “bonus” for C corporations.

**Virginia:** In Tax Bulletin 02-2, the Department of Taxation advised Virginia taxpayers that taxable income should be computed in accordance with federal tax laws as they existed on December 31, 2001. Since the issuance of the bulletin, the Internal Revenue Service updated 2001 Form 4562, “Depreciation and Amortization,” and Form 2106, “Employee Business Expenses,” to reflect changes made by JCWA. The Department has created Virginia Form 4562 and Virginia Form 2106 to help taxpayers determine the total amount of depreciation that they would have deducted under the IRC as it existed on December 31, 2001.

Taxpayers who previously filed a 2001 Virginia income tax return that (1) was computed under the IRC as it existed on December 31, 2001, or (2) made a special addition equal to the difference in the amount of depreciation

allowable, do not need to file additional returns. Taxpayers who have either not filed a 2001 original return or who filed a return under the current IRC should file the appropriate return with adjustments as explained in the bulletin.

**Washington:** Washington does not impose a corporate income tax.

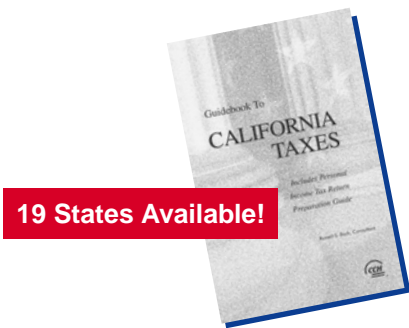
**West Virginia:** Changes to federal law made after 2001 but before March 15, 2002, that affect the determination of federal corporate income tax and personal income tax, are adopted for West Virginia corporate income tax and personal income tax purposes. As JCWA was signed on March 9, 2002, its provisions are adopted for West Virginia.

**Wisconsin:** Wisconsin taxpayers may not claim the 30% “bonus” depreciation allowed under the JCWA.

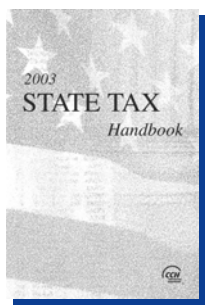
**Wyoming:** Wyoming does not impose a corporate income tax.



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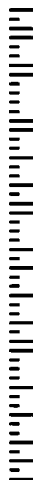
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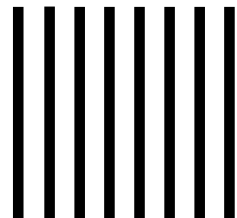


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