

2015 Regular Session

HOUSE BILL NO. 395

BY REPRESENTATIVE JAY MORRIS

TAX/INCOME TAX: Eliminates the carryback provisions for the net operating loss deduction for purposes of corporate income tax

1 AN ACT

2 To amend and reenact R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D), (E), and (I),
3 1621(B)(7), and 1623(E)(introductory paragraph) and to repeal R.S. 47:287.86(F),
4 (G), and (H), and 1623(C) and (D), relative to corporate income tax; to provide for
5 the net operating loss deduction; to eliminate net operating loss deduction carryback;
6 to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D), (E), and (I),
9 1621(B)(7), and 1623(E)(introductory paragraph) are hereby amended and reenacted to read
10 as follows:

11 §246. Corporations; deduction from net income from Louisiana sources

12 * * *

13 E. ~~At~~ For losses incurred for taxable years prior to January 1, 2015, at the
14 election of the taxpayer, a net operating loss deduction as determined in Subsection
15 B of this Section, may be a net operating loss carry-back to each of the three taxable
16 years preceding the taxable year of such loss. Such election shall be made in
17 accordance with rules and regulations prescribed by the Secretary of Revenue and
18 Taxation. The first period to which a net operating loss may be carried under this
19 provision is taxable years beginning on or after January 1, 1980.

20 * * *

1 income for each of the ~~prior~~ taxable years to which such loss may be carried. For the
2 purposes of this Subsection:

3 (1) Louisiana taxable income shall not be adjusted to less than zero.

4 (2) In calculating the aggregate Louisiana taxable incomes in cases where
5 more than one loss year must be taken into account, the various net operating loss
6 carryovers ~~and carrybacks~~ to such taxable year are considered to be applied in
7 reduction of Louisiana net income in the order of the taxable years from which such
8 losses are carried over ~~or carried back~~, beginning with the loss for the earliest taxable
9 year.

10 ~~D. Election to relinquish carryback. Any taxpayer may make an election to~~
11 ~~relinquish the carryback treatment allowed and have its Louisiana net loss treated~~
12 ~~only as a carryover. Such election shall be made as prescribed by the secretary.~~

13 E. D. Statement with tax return. Every corporation claiming a net operating
14 loss deduction for any taxable year shall file with its return for such year a concise
15 statement setting forth the amount of the net operating loss claimed and all material
16 and pertinent facts relative thereto, including a detailed schedule showing the
17 computation of the net operating loss deduction.

18 * * *

19 F. E. Net operating loss carryovers.

20 (†) Notwithstanding any other provisions of this Chapter to the contrary, the
21 acquiring corporation shall succeed to and take into account, as of the close of the
22 day of distribution or transfer, the aggregate net operating loss carryovers of the
23 distributors or transferor corporation as determined under this Section, subject to
24 federal law and the limitations provided thereunder.

25 (2) ~~Net operating losses generated after the effective date of a reorganization~~
26 ~~cannot be carried back to a corporation that does not survive the reorganization,~~
27 ~~unless the reorganization is a reorganization under Internal Revenue Code Section~~
28 ~~368(a)(1)(F). For purposes of this Part, the surviving entity of a reorganization under~~

1 ~~Internal Revenue Code Section 368(a)(1)(F) is the same entity as the transferor~~
2 ~~entity, and the reorganization will be treated as a mere change in form.~~

3 * * *

4 §1621. Refunds of overpayments authorized

5 * * *

6 B. The secretary shall make a refund of each overpayment where it is
7 determined that:

8 * * *

9 (7) With regard to a Louisiana income tax overpayment, the overpayment
10 resulted from application of a Louisiana net operating loss ~~carryback~~ or carryover.

11 * * *

12 §1623. Prescription of refunds or credits

13 * * *

14 E. C. Provided that where a refund or credit relates to an overpayment of
15 income tax, the running of prescription shall be suspended by means of:

16 * * *

17 Section 2. R.S. 47:287.86(F), (G), and (H) and 1623(C) and (D) are repealed in their
18 entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 395 Original

2015 Regular Session

Jay Morris

Abstract: Eliminates the three year carryback of the net operating loss deduction for purposes of calculating corporate income tax liability.

Present law provides for imposition, computation, and payment of income tax for estates and property held in trust. Present law further authorizes the net operating loss to be deducted from net income in any of the 15 years immediately following the year in which the loss occurred.

Present law provides a deduction from Louisiana net income for a net operating loss to be carried back three taxable years preceding the taxable year of such loss or carried over to each of the 15 taxable years following the taxable year of such loss.

Proposed law repeals the three year carryback provisions of present law.

Present law provides for refunds of overpayment of taxes, penalties, and interest. Further authorizes a refund when La. tax overpayment results from application of a net operating loss carryback.

Proposed law retains present law but repeals provisions relative to net operating loss carry back.

Present law provides a three year prescriptive period within which a refund or credit shall be paid and provides for suspension of the prescriptive period. Further provides a time table for prescription when a refund or credit is attributable to net the operating loss deduction carryback election.

Proposed law retains present law but repeals provisions relative to the net operating loss deduction carryback election.

(Amends R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D), (E), and (I), 1621(B)(7), and 1623(E)(intro. para.); Repeals R.S. 47:287.86(F), (G), and (H) and 1623(C) and (D))