

2015 Regular Session

SENATE BILL NO. 224

BY SENATOR DONAHUE

TAX/TAXATION. Eliminates the net operating loss carryback and maintains the carryforward. (gov sig)

AN ACT

To amend and reenact R.S. 47:246(E), (F), and (G) and 287.86(A), (B)(1), (C), (D), (F), (G), and (H), relative to deduction of net operating losses from corporate income tax; to prohibit such losses from being carried back to earlier taxable periods; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:246(E), (F), and (G) and 287.86(A), (B)(1), (C), (D), (F), (G), and (H) are hereby amended and reenacted to read as follows:

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

\* \* \*

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

**provisions of this Subsection shall not apply to taxable years beginning January 1, 2015, or thereafter.**

F. A taxpayer may request a tentative refund resulting from the election provided in ~~R.S. 47:246(E)~~ **Subsection E of this Section** using the forms and in the manner prescribed by the secretary. If the tentative refund is paid, the secretary may recover any amount, to the extent of the tentative refund, determined not to be an overpayment through any procedure provided in R.S. 47:1561 within two years from December 31<sup>st</sup> **thirty-first** of the year in which the refund was paid. Any amount determined not to have been overpaid shall bear interest at the rate provided in R.S. 47:1601 computed from the date the tentative refund was issued until payment is made by the taxpayer. **The provisions of this Subsection shall not apply to taxable years beginning January 1, 2015, or thereafter.**

G. Any amount actually refunded, tentative or otherwise, as an overpayment resulting from a net operating loss ~~carry-back~~ **carryback** shall bear interest at the rate provided in R.S. 47:1624 computed ninety days after the date the request for tentative refund or claim for refund (amended return) is filed, or from ninety days after the due date, without regard to extensions of time, to file of the loss year return, whichever is later. **The provisions of this Subsection shall not apply to taxable years beginning January 1, 2015, or thereafter.**

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§287.86. Net operating loss deduction

A. Deduction from Louisiana net income. Except as otherwise provided, there shall be allowed for the taxable year an adjustment reducing Louisiana net income in an amount equal to the aggregate of:

(1) The net operating loss carryovers to such year, plus

(2) The net operating loss carrybacks to such year. **No carrybacks shall be allowed for taxable years beginning January 1, 2015, or thereafter.**

B. Net operating loss carrybacks and carryovers. The taxable years to which a Louisiana net loss may be carried shall be:

(1) ~~For taxable years beginning before January 1, 2015,~~ a net operating loss carryback to each of the three taxable years preceding the taxable year of such loss, unless carryback treatment is relinquished pursuant to R.S. 47:287.86(D) the provisions of Subsection D of this Section. No carrybacks shall be allowed for taxable years beginning January 1, 2015, or thereafter.

\* \* \*

C. Manner and amount of carrybacks and carryovers. The entire amount of Louisiana net loss for any taxable year beginning before January 1, 2015, hereinafter the "loss year", shall be carried back to the earliest of the taxable years allowed, unless an election to relinquish carryback treatment is made, in which case such loss shall be carried to the earliest of the taxable years allowed for carryovers. For taxable years beginning on January 1, 2015, or thereafter, the net loss may be carried forward only. The portion of such loss which shall be carried to each of the other taxable years allowed by Subsection B of this Section shall be the excess, if any, of the amount of such loss over the aggregate of the Louisiana taxable income for each of the prior taxable years to which such loss may be carried. For the purposes of this Subsection:

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

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

D. Election to relinquish carryback. ~~Any~~ Effective for taxable years beginning before January 1, 2015, any taxpayer may make an election to relinquish the carryback treatment allowed and have its Louisiana net loss treated only as a carryover. Such election shall be made as prescribed by the secretary.

\* \* \*

1 F. Adjustment dependent upon Louisiana net loss carryback. If in computing  
2 the net operating loss deduction the taxpayer is entitled to a carryback which cannot  
3 be ascertained at the time the return is due, the deduction, if any, shall be computed  
4 without regard to such carryback. When the taxpayer ascertains the correct amount  
5 of such carryback, a claim for credit or refund of the overpayment, if any, resulting  
6 from the failure to compute the deduction for the taxable year with the inclusion of  
7 such carryback may be filed within the prescriptive period, or the taxpayer may file  
8 an application for a tentative refund as provided in Subsection G. **The provisions**  
9 **of this Subsection shall not apply to taxable years beginning January 1, 2015,**  
10 **or thereafter.**

11 G. Tentative refund. ~~A~~ **Effective for taxable years beginning before**  
12 **January 1, 2015, a** taxpayer may request a tentative refund resulting from the  
13 application of a net operating loss carryback in the manner and with forms prescribed  
14 by the secretary. If the tentative refund is paid, the secretary may recover any amount  
15 thereof determined not to be an overpayment through any collection remedy  
16 authorized by R.S. 47:1561 within two years from December thirty-first of the year  
17 in which the refund was paid. Any tentatively refunded amount determined not to be  
18 an overpayment shall bear interest at the rate provided in R.S. 47:1601, which shall  
19 be computed from the date the tentative refund was issued to the date payment is  
20 received by the secretary.

21 H. Interest on refunds. ~~Any~~ **Effective for taxable years beginning before**  
22 **January 1, 2015, any** amount actually refunded as an overpayment resulting from  
23 the application of a net operating loss carryback, tentative or otherwise, shall bear  
24 interest at the rate provided in R.S. 47:1624, which shall be computed:

25 (1) From the latest of the following dates:

26 (a) Ninety days after the date the request for tentative refund or claim for  
27 refund (amended return) is filed.

28 (b) Ninety days after the due date of the loss year return without regard to  
29 extensions of time to file.

1 (2) To the date such refund is issued by the secretary.

2 \* \* \*

3 Section 2. This Act shall become effective upon signature by the governor or, if not  
4 signed by the governor, upon expiration of the time for bills to become law without signature  
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
7 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Laura Gail Sullivan.

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DIGEST

SB 224 Original

2015 Regular Session

Donahue

Present law allows a state corporate income tax deduction for net operating losses.

Proposed law retains present law.

Present law allows the deduction to be carried back for up to three years and to be carried forward for up to five years by nonresident corporations and up to 15 years by La. corporations. Allows a refund resulting from application as a carryback.

For taxable years beginning on or after Jan. 1, 2015, proposed law prohibits the carryback and eliminates the refund resulting from application as a carryback. Retains the carryforward provisions.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:246(E), (F), and (G) and 287.86(A), (B)(1), (C), (D), (F), (G), and (H))