

2020 First Extraordinary Session

HOUSE BILL NO. 25

BY REPRESENTATIVE WRIGHT

TAX/CORP INCOME: Authorizes carry-back provisions for the net operating loss deduction for purposes of calculating corporate income tax (Item #20)

1 AN ACT

2 To amend and reenact R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and
3 1623(C) and to enact R.S. 47:287.86(F), relative to the net operating loss deduction;
4 to authorize the carry-back of certain corporate income tax deductions for purposes
5 of calculating corporate income tax; to provide for the administration of the
6 deduction; to provide for certain adjustments; to authorize the refund of certain
7 amounts; to authorize the payment of interest on certain amounts; to provide for time
8 limitations for the payment of certain claims; to provide for effectiveness; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and 1623(C)
12 are hereby amended and reenacted and R.S. 47:287.86(F) is hereby enacted to read as
13 follows:

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

15 * * *

16 E.(1) For all claims for this deduction on any return filed on or after July 1,
17 2015, regardless of the taxable year to which the return relates, no carry-back
18 election shall be allowed.

19 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
20 beginning in taxable years commencing on and after January 1, 2017, through

1 taxable years commencing before January 1, 2022, at the election of the taxpayer, a
 2 net operating loss deduction as determined in Subsection B of this Section may
 3 include a net operating loss carry-back to each of the taxable years preceding the
 4 taxable year of the loss. The secretary of the Department of Revenue shall
 5 promulgate rules in accordance with the Administrative Procedure Act as are
 6 necessary to allow for the election by the taxpayer of a net operating loss carry-back.
 7 The first period to which a net operating loss may be carried pursuant to this
 8 Paragraph is the first taxable year beginning on or after January 1, 2017.

9 * * *

10 G.(1) For all claims for this deduction on any return filed on or after July 1,
 11 2015, regardless of the taxable year to which the return relates, no refund shall be
 12 allowed.

13 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
 14 beginning in taxable years commencing on and after January 1, 2017, through
 15 taxable years commencing before January 1, 2022, any amount actually refunded,
 16 tentative or otherwise, as an overpayment resulting from a net operating loss
 17 carry-back shall bear interest at the rate provided in R.S. 47:1624 computed ninety
 18 days after the date the request for tentative refund or claim for refund on an amended
 19 return is filed or ninety days after the due date, without regard to extensions of time,
 20 of the loss year return, whichever is later.

21 * * *

22 §287.86. Net operating loss deduction

23 A. Deduction from Louisiana net income. (1) Except as otherwise provided,
 24 for all claims for this deduction on any return filed on or after July 1, 2015,
 25 regardless of the taxable year to which the return relates, there shall be allowed for
 26 the taxable year a deduction reducing Louisiana net income in an amount equal to
 27 seventy-two percent of the net operating loss carryovers to such year, but the
 28 deduction shall never exceed seventy-two percent of Louisiana net income.

1 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
2 beginning in taxable years commencing on and after January 1, 2017, through
3 taxable years commencing before January 1, 2022, there shall be allowed for the
4 taxable year an adjustment reducing Louisiana net income in an amount equal to the
5 aggregate of net operating loss carryovers to the taxable year and the net operating
6 loss carry-backs to the taxable year.

7 B. Net operating loss carrybacks and carryovers. (1) For all claims for this
8 deduction on any return filed on or after July 1, 2015, regardless of the taxable year
9 to which the return relates, the taxable years to which a Louisiana net loss may be
10 carried shall be a net operating loss carryover to each of the twenty taxable years
11 following the taxable year of such loss.

12 (2) Beginning in tax years commencing on and after January 1, 2017,
13 through tax years commencing before January 1, 2022, a net operating loss carry-
14 back shall be allowed to each taxable year preceding the taxable year of the loss,
15 unless carry-back treatment is relinquished pursuant to Subsection F of this Section.

16 C. Manner and amount of carry-backs and carryovers. (1) For all claims for
17 this deduction on any return filed on or after July 1, 2015, regardless of the taxable
18 year to which the return relates, the entire amount of Louisiana net loss for any
19 taxable year, hereinafter the "loss year", shall be carried over to the earliest of the
20 taxable years allowed. The portion of ~~such~~ the loss which shall be carried to each
21 of the other taxable years allowed by Subsection B of this Section shall be the
22 excess, if any, of the amount of ~~such~~ the loss over the aggregate of the Louisiana
23 taxable income for each of the taxable years to which ~~such~~ the loss may be carried.

24 (2) Beginning in tax years commencing on and after January 1, 2017,
25 through tax years commencing before January 1, 2022, the entire amount of
26 Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried
27 back to the earliest of the taxable years allowed unless an election to relinquish
28 carry-back treatment is made, in which case the loss shall be carried back to the
29 earliest of the taxable years allowed for carry-backs. The portion of the loss which

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

3 * * *

4 (7) With regard to a Louisiana income tax overpayment, the overpayment
5 resulted from application of a Louisiana net operating loss carry-back or carryover
6 for all claims for this deduction on any return filed on or after July 1, 2015,
7 regardless of the taxable year to which the return relates.

8 * * *

9 §1623. Prescription of refunds or credits

10 * * *

11 C.(1) No refund shall be allowed for any claim for this deduction on any
12 return filed on or after July 1, 2015, regardless of the taxable year to which the return
13 relates.

14 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
15 beginning in tax years commencing on and after January 1, 2017, through tax years
16 commencing before January 1, 2022, in any case where a refund relates to an
17 overpayment attributable to a net operating loss deduction carry-back election made
18 pursuant to R.S. 47:246(E) or 287.86, in lieu of the three-year period of limitation
19 prescribed in Subsection A of this Section, the period shall be the period which ends
20 three years from the thirty-first day of December of the year in which the tax for the
21 loss year would become due or the period prescribed in Subsection B or E of this
22 Section with respect to the taxable year, whichever expires later.

23 * * *

24 Section 2. This Act shall become effective on July 1, 2020; if vetoed by the governor
25 and subsequently approved by the legislature, this Act shall become effective on July 1,
26 2020, or on the day following such approval by the legislature, whichever is later.

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 25 Original

2020 First Extraordinary Session

Wright

Abstract: Authorizes a taxpayer to elect to carry-back a net operating loss deduction to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022.

Present law prohibits a carry-back election on corporate returns for net operation losses and prohibits refunds for amounts of the net operating loss deduction that exceed a corporation's tax liability.

Proposed law changes present law by authorizing a taxpayer to elect to carry-back a net operating loss deduction to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022.

Proposed law changes present law by requiring any amount refunded as an overpayment resulting from a net operating loss carry-back to bear interest at the rate provided in present law computed 90 days after the date the request for tentative refund or claim for refund is filed or 90 days after the due date, without regard to extensions of time, of the loss year return, whichever is later.

Proposed law authorizes the secretary of the Dept. of Revenue to promulgate rules in accordance with the Administrative Procedure Act as are necessary to allow for the election by the taxpayer of a net operative loss carry-back.

Present law authorizes claims for a net operating loss deduction on returns filed on or after July 1, 2015, reducing La. net income in an amount equal to 72% of the net operating loss carryovers to the taxable year, but the deduction shall never exceed 72% of La. net income. Further authorizes a carryover of net operating losses to each of the 20 taxable years following the taxable year of the loss.

Proposed law retains present law but also provides for a limited exception to present law beginning in taxable years commencing on and after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022, an adjustment reducing La. net income in an amount equal to the aggregate of net operating loss carryovers to the taxable year and the net operating loss carry-backs to the taxable year unless carry-back treatment is relinquished by the taxpayer.

Present law requires the entire amount of La. net loss for any taxable year, to be carried over to the earliest taxable year allowed and the portion of the loss carried to each subsequent taxable year shall be considered the excess, if any, of the amount of the loss over the aggregate of La. taxable income for each of the taxable years to which the loss may be carried. However, the in this calculation, La. taxable income shall not be adjusted to less than zero, and, in cases where more than one loss year must be taken into account, the various net operating loss carryovers for the taxable year shall be considered to be applied in the order of the taxable years from which the losses are carried over beginning with the loss for the earliest taxable year.

Proposed law retains present law but specifies that provisions of present law also apply to carry-backs and that the entire amount of La. net loss for any taxable year shall be carried back to the earliest of the taxable years allowed unless an election to relinquish carry-back

treatment is made by the taxpayer, in which case the loss shall be carried back to the earliest taxable years allowed for carry-backs.

Proposed law establishes a procedure by which a taxpayer may make an election to relinquish the carry-back treatment and have its La. net loss treated only as a carryover. Provides for an adjustment dependent on La. net loss carry-back if the amount of the net operating loss deduction that the taxpayer is entitled to a carry-back cannot be ascertained at the time the return is due. Provides for tax treatment of the amount of the net operating loss allowed to be carried-back when a business is reorganized.

Proposed law authorizes a taxpayer to request a tentative refund for a net operating loss carry-back that will result in a refund. If the tentative refund is paid, the secretary may recover any amount determined not to be an overpayment through any collection remedy authorized in present law within two years from Dec. 31st of the year in which the refund was paid. Any amount refunded as an overpayment resulting from the application of a net operating loss carry-back, tentative or otherwise, shall bear interest at the rate provided in present law which shall be computed from 90 days after the date the request for tentative refund or claim for refund on an amended return is filed or 90 days after the due date of the loss year return without regard to extensions of time to file, whichever is later.

Proposed law provides that beginning in taxable years commencing on and after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022, if a refund relates to an overpayment attributable to a net operating loss deduction carry-back election, in lieu of the three-year period of limitation for filing a refund claim, the period shall be the period which ends three years from Dec. 31st of the year in which the tax for the loss year would become due or a different period of time provided for in present law with respect to the taxable year, whichever expires later.

Effective July 1, 2020.

(Amends R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and 1623(C); Adds R.S. 47:287.86(F))