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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

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DIGEST

SB 22 Original

2020 First Extraordinary Session

McMath

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, 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))