

1 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
2 beginning in taxable years commencing on and after January 1, 2019, through
3 taxable years commencing before January 1, 2021, there shall be allowed for the
4 taxable year an adjustment reducing Louisiana net income in an amount equal to
5 seventy-two percent of the aggregate of net operating loss carryovers to the taxable
6 year and the net operating loss carry-backs to the taxable year, but the deduction
7 shall never exceed seventy-two percent of Louisiana net income.

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

13 (2) Beginning in tax years commencing on and after January 1, 2019,
14 through tax years commencing before January 1, 2021, a net operating loss carry-
15 back shall be allowed to each taxable year preceding the taxable year of the loss,
16 unless carry-back treatment is relinquished pursuant to Subsection F of this Section.

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

25 (2) Beginning in tax years commencing on and after January 1, 2019,
26 through tax years commencing before January 1, 2021, the entire amount of
27 Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried
28 back to the earliest of the taxable years allowed unless an election to relinquish
29 carry-back treatment is made, in which case the loss shall be carried back to the

1 earliest of the taxable years allowed for carry-backs. The portion of the loss which
2 shall be carried to each of the other taxable years allowed by Paragraph (B)(2) of this
3 Section shall be the excess, if any, of the amount of the loss over the aggregate of the
4 Louisiana taxable income for each of the taxable years to which the loss may be
5 carried. For ~~the~~ purposes of this Subsection:

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

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

13 * * *

14 F. Net operating loss carry-backs. Beginning in taxable years commencing
15 on and after January 1, 2019, through tax years commencing before January 1, 2021,
16 the following provisions concerning net operation loss carry-backs shall apply:

17 (1) Election to relinquish carry-back. Any taxpayer may make an election
18 to relinquish the carry-back treatment allowed and have its Louisiana net loss treated
19 only as a carryover. The taxpayer shall make this election in the manner prescribed
20 by the secretary of the Department of Revenue.

21 (2) Adjustment dependent upon Louisiana net loss carry-back. If in
22 computing the net operating loss deduction, the taxpayer is entitled to a carry-back
23 which cannot be ascertained at the time the return is due, the deduction, if any, shall
24 be computed without regard to the carry-back. When the taxpayer ascertains the
25 correct amount of the carry-back, a claim for credit or refund of the overpayment,
26 if any, resulting from the failure to compute the deduction for the taxable year with
27 the inclusion of the carry-back may be filed within the prescriptive period, or the
28 taxpayer may file an application for a tentative refund as provided for in Paragraph
29 (4) of this Subsection.

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, 2019, through tax years
16 commencing before January 1, 2021, 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 Engrossed

2020 First Extraordinary Session

Wright

Abstract: Authorizes a taxpayer to elect to carry back 72% of a net operating loss to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.

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 72% of a net operating loss to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.

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 operating 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, 2019, through taxable years commencing before Jan. 1, 2021, an adjustment reducing La. net income in an amount equal to the aggregate of 72% of net operating loss carryovers to the taxable year and 72% of the net operating loss carry-backs to the taxable year unless carry-back treatment is relinquished by the taxpayer. Further prohibits the net operating loss carry-back deduction from exceeding 72% of the taxpayer's La. net income.

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, 2019, through taxable years commencing before Jan. 1, 2021, 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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Reduce the amount of the net operating loss deduction carry-back from 100% of the taxpayer's loss to 72% of the taxpayer's loss.
2. Prohibit the net operating loss carry-back deduction from exceeding 72% of the taxpayer's La. net income.
3. Change the taxable years in which proposed law applies from beginning on or after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022, to taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.