LEGISLATIVE FISCAL OFFICE
Fiscal Note

Fiscal Note On: **HB** **25** HLS 201ES 34
Bill Text Version: **ENGROSSED**
Opp. Chamb. Action:
Proposed Amd.:
Sub. Bill For.:

Date: June 16, 2020 11:25 AM
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Dept./Agy.: Revenue
Subject: Net Operating Loss Deduction
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TAX/CORP INCOME EG DECREASE GF RV See Note

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

Present law allows a net operating loss 20-year carryforward of 72% of the deduction limited to 72% of net income. Carrybacks are not allowed.

Proposed law allows net operating losses incurred in tax years 2019 and 2020 to be carried back to offset positive net income in preceding tax years, generating a refund of taxes already paid. However, the first period to which a loss can be carried is the 2019 tax year. The carry-back is limited to the present law provisions of 72% of the net operating loss and 72% of net income. Taxpayers can request a tentative refund from a carry-back. The Dept. can recover inappropriate tentative refund amounts through current law collection remedies within two years of the year paid in. Interest is payable on refunds, tentative or otherwise, after 90-day periods.
Effective July 1, 2020.

EXPENDITURES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	INCREASE	INCREASE	INCREASE	$0	$0	**$0**
Agy. Self-Gen.	$0	$0	$0	$0	$0	**$0**
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total				**$0**	**$0**	**$0**

REVENUES	2020-21	2021-22	2022-23	2023-24	2024-25	5 -YEAR TOTAL
State Gen. Fd.	DECREASE	DECREASE	SEE BELOW			
Agy. Self-Gen.	$0	$0	$0	$0	$0	**$0**
Ded./Other	$0	$0	$0	$0	$0	**$0**
Federal Funds	$0	$0	$0	$0	$0	**$0**
Local Funds	$0	$0	$0	$0	$0	**$0**
Annual Total				**$0**	**$0**	**$0**

EXPENDITURE EXPLANATION

While the number of tax year 2019 and tax year 2020 taxpayers who could take advantage of the bill's carry-back provisions is unknown, it could be several thousand taxpayers. The Dept. of Revenue identified approximately 4,700 taxpayers that could carry back 2018 losses and request refunds if this bill applied to losses incurred in the 2018 tax year. Given the Covid-19 event in 2020, it is likely that more than that count would be eligible for the 2020 tax year (plus eligible 2019 tax year returns). To timely process carry-back claims and minimize interest costs required in the bill, the Dept. anticipates the need for two additional tax specialist positions ($140,000 salary & benefits and 2% annual cost growth) plus one-time system modification costs of $103,000.

At least three years of effects are assumed to account for tax periods, including extension periods, overlapping fiscal years, and the possibility of portions of tentative refunds having to be recovered by LDR.

REVENUE EXPLANATION

The number of tax year 2019 and tax year 2020 taxpayers, and the associated net operating losses that could be effected by the bill is unknown (2019 returns are filed in 2020 through the extension period of October 2020, and 2020 returns have not been filed at all). The Dept. of Revenue recalculated subsets of 2018 returns as examples of the possible effect of the bill, and generated a wide range of estimated effects (from $16 million to over $400 million). The highest and lowest estimates seemed unlikely (requiring all firms to have net operating losses, or almost none to have losses).

Since the 2020 returns will certainly have a disproportionate amount of losses due to the Covid-19 event, the Dept. then recalculated 2018 returns with up to $1 million of net income on the assumption that these forms would be more likely to experience net operating losses. For those returns the effect of the bill was a $65 million state revenue loss. This approach generates an estimate that seems more plausible. Some of those firms will not have losses, even with the Covid-19 event, while there will be some firms with greater than $1 million of net income that do experience losses in 2020. While a precise estimate is not possible, and a range of realization should be acknowledged, the bill seems likely to generate revenue losses in the tens of millions of dollars.

At least three years of effects are assumed to account for tax periods, including extension periods, overlapping fiscal years, and the possibility of portions of tentative refunds having to be recovered by LDR.

Senate Dual Referral Rules
- [x] 13.5.1 >= $100,000 Annual Fiscal Cost {S & H}
- [x] 13.5.2 >= $500,000 Annual Tax or Fee Change {S & H}

House
- [x] 6.8(F)(1) >= $100,000 SGF Fiscal Cost {H & S}
- [ ] 6.8(G) >= $500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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