

2015 Regular Session

HOUSE BILL NO. 423

BY REPRESENTATIVE HARRIS

TAX/CORP INCOME: Removes the carryback provisions for the net operating loss deduction for purposes of the corporate income tax

1 AN ACT

2 To amend and reenact R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D), (E) and (I),

3 1621(B)(7), and 1623(E)(introductory paragraph), and to repeal R.S. 47:287.86(F),

4 (G), and (H) and 1623(C) and (D), relative to corporate income tax; to provide for

5 the net operating loss deduction; to eliminate net operating loss deduction carryback;

6 to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D), (E), and (I),

9 1621(B)(7), and 1623(E)(introductory paragraph) are hereby amended and reenacted to read

10 as follows:

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

12 \* \* \*

13 E. ~~At~~ For losses incurred for taxable years prior to January 1, 2015, at the

14 election of the taxpayer, a net operating loss deduction as determined in Subsection

15 B of this Section, may be a net operating loss carry-back to each of the three taxable

16 years preceding the taxable year of such loss. Such election shall be made in

17 accordance with rules and regulations prescribed by the Secretary of Revenue and

18 Taxation. The first period to which a net operating loss may be carried under this

19 provision is taxable years beginning on or after January 1, 1980.

20 \* \* \*

1 G. ~~Any~~ For losses incurred for taxable years prior to January 1, 2015, any  
2 amount actually refunded, tentative or otherwise, as an overpayment resulting from  
3 a net operating loss carry-back shall bear interest at the rate provided in R.S. 47:1624  
4 computed ninety days after the date the request for tentative refund or claim for  
5 refund (amended return) is filed, or from ninety days after the due date, without  
6 regard to extensions of time, to file of the loss year return, whichever is later.

7 \* \* \*

8 §287.86. Net operating loss deduction

9 A. Deduction from Louisiana net income. Except as otherwise provided, for  
10 losses incurred for taxable years beginning on or after January 1, 2015, there shall  
11 be allowed for the taxable year an adjustment reducing Louisiana net income in an  
12 amount equal to the ~~aggregate of:~~

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

14 (2) ~~The net operating loss carrybacks to such year.~~

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

17 (1) ~~A~~ For losses incurred for taxable years beginning on or after January 1,  
18 1984, and before January 1, 2015, net operating loss carryback to each of the three  
19 taxable years preceding the taxable year of such loss, unless carryback treatment is  
20 relinquished pursuant to R.S. 47:287.86(D).

21 \* \* \*

22 C. Manner and amount of ~~carrybacks and~~ carryovers. The entire amount of  
23 Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried  
24 back over to the earliest of the taxable years allowed, ~~unless an election to relinquish~~  
25 ~~carryback treatment is made, in which case such loss shall be carried to the earliest~~  
26 ~~of the taxable years allowed for carryovers.~~ The portion of such loss which shall be  
27 carried to each of the other taxable years allowed by Subsection B shall be the  
28 excess, if any, of the amount of such loss over the aggregate of the Louisiana taxable

1 income for each of the ~~prior~~ taxable years to which such loss may be carried. For the  
2 purposes of this Subsection:

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

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

10 ~~D. Election to relinquish carryback. Any taxpayer may make an election to~~  
11 ~~relinquish the carryback treatment allowed and have its Louisiana net loss treated~~  
12 ~~only as a carryover. Such election shall be made as prescribed by the secretary.~~

13 E.D. Statement with tax return. Every corporation claiming a net operating  
14 loss deduction for any taxable year shall file with its return for such year a concise  
15 statement setting forth the amount of the net operating loss claimed and all material  
16 and pertinent facts relative thereto, including a detailed schedule showing the  
17 computation of the net operating loss deduction.

18 \* \* \*

19 F. E. Net operating loss carryovers.

20 ~~(1)~~ Notwithstanding any other provisions of this Chapter to the contrary, the  
21 acquiring corporation shall succeed to and take into account, as of the close of the  
22 day of distribution or transfer, the aggregate net operating loss carryovers of the  
23 distributors or transferor corporation as determined under this Section, subject to  
24 federal law and the limitations provided thereunder.

25 ~~(2) Net operating losses generated after the effective date of a reorganization~~  
26 ~~cannot be carried back to a corporation that does not survive the reorganization,~~  
27 ~~unless the reorganization is a reorganization under Internal Revenue Code Section~~  
28 ~~368(a)(1)(F). For purposes of this Part, the surviving entity of a reorganization under~~

1 ~~Internal Revenue Code Section 368(a)(1)(F) is the same entity as the transferor~~  
2 ~~entity, and the reorganization will be treated as a mere change in form.~~

3 \* \* \*

4 §1621. Refunds of overpayments authorized

5 \* \* \*

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

8 \* \* \*

9 (7) With regard to a Louisiana income tax overpayment, the overpayment  
10 resulted from application of a Louisiana net operating loss ~~carryback~~ or carryover.

11 \* \* \*

12 §1623. Prescription of refunds or credits

13 \* \* \*

14 E. C. Provided that where a refund or credit relates to an overpayment of  
15 income tax, the running of prescription shall be suspended by means of:

16 \* \* \*

17 Section 2. R.S. 47:287.86(F), (G), and (H) and 1623(C) and (D) are hereby repealed  
18 in their entirety.

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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)]

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HB 423 Original

2015 Regular Session

Harris

**Abstract:** Eliminates the three year carryback of the net operating loss deduction for purposes of calculating corporate income tax liability.

Present law provides for imposition, computation, and payment of income tax for estates and property held in trust. Present law further authorizes the net operating loss to be deducted from net income in any of the 15 years immediately following the year in which the loss occurred.

Present law provides a deduction from Louisiana net income for a net operating loss to be carried back three taxable years preceding the taxable year of such loss or carried over to each of the 15 taxable years following the taxable year of such loss.

Proposed law repeals the three year carryback provisions of present law.

Present law provides for refunds of overpayment of taxes, penalties, and interest. Further authorizes a refund when La. tax overpayment results from application of a net operating loss carryback.

Proposed law retains present law but repeals provisions relative to net operating loss carry back.

Present law provides a three year prescriptive period within which a refund or credit shall be paid and provides for suspension of the prescriptive period. Further provides a time table for prescription when a refund or credit is attributable to net a operating loss deduction carryback election.

Proposed law retains present law but repeals provisions relative to the net operating loss deduction carryback election.

(Amends R.S. 47:246(E) and (G), 287.86(A), (B)(1), (C), (D),(E), and (I), 1621(B)(7), and 1623(E)(intro. para.); Repeals R.S. 47:287.86(F), (G), and (H), and 1623(C) and (D))