

2015 Regular Session

SENATE BILL NO. 180

BY SENATOR ADLEY

TAX/TAXATION. Makes the net operating loss deduction nonrefundable, removes the carryback, and authorizes a carryforward of twenty years. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:246 and 287.86, relative to deduction of net operating losses
3 from corporate income tax; to allow such losses to be carried forward for a period
4 of twenty years; to prohibit such losses from being carried back to earlier taxable
5 periods; to provide that the deduction is not refundable; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:246 and 287.86 are hereby amended and reenacted to read as
9 follows:

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

11 A. Subject to the limitations provided herein, there shall be deducted from
12 any net income from Louisiana sources determined under the provisions of R.S.
13 47:241 of a corporation for any year following the close of the first taxable year
14 which commenced on or after January 1, 1979, the amount of net Louisiana loss
15 incurred in a preceding year determined as provided in Subsection B of this Section.

16 B.(1) The amount of net Louisiana loss incurred in any **taxable** year
17 commencing on or after January 1, 1979, shall be the amount determined by

1 combining the total of net allocable gain or loss within or attributable to sources in
2 this state as determined under the provisions of R.S. 47:243 and the net
3 apportionable gain or loss within or attributable to sources in this state as determined
4 under the provisions of R.S. 47:244, reduced by the amount of any federal income
5 tax credit or refund from a prior year attributable to the ~~carry-back~~ **carryback** of a
6 loss for federal income tax purposes which is applicable to federal income tax
7 deducted from Louisiana net income in such prior year.

8 (2)(a) The net Louisiana loss as thus computed for any ~~tax year~~ **taxable year**
9 **beginning before January 1, 2015,** may be deducted from net income calculated
10 under the provisions of R.S. 47:241 in any of the five years immediately following
11 the year in which the loss occurred.

12 **(b) The net Louisiana loss as thus computed for any taxable year**
13 **beginning January 1, 2015, or thereafter may be deducted from net income**
14 **calculated under the provisions of R.S. 47:241 in any of the twenty years**
15 **immediately following the year in which the loss occurred.**

16 C. The amount of net Louisiana loss to be deducted in the first taxable year
17 following the taxable year in which the net loss was incurred shall not exceed the
18 amount of net income from Louisiana sources calculated under the provisions of R.S.
19 ~~47:241; the~~ **47:241. The** amount of net Louisiana loss available as a deduction for
20 each of the following ~~four~~ years shall be the excess, if any, of the net Louisiana loss
21 over the sum of the deductions claimed against net income from Louisiana sources
22 for each of the years following the year of the net Louisiana loss.

23 D. The deduction from net income from Louisiana sources for any **taxable**
24 year shall not exceed net income from Louisiana sources for that year and no
25 deduction for a net Louisiana loss for any years shall be allowed in the year
26 following the year in which the total of net income from Louisiana sources
27 determined under the provisions of R.S. 47:241 for all years following the year of the
28 net Louisiana loss equals or exceeds the amount of the net Louisiana loss.

29 E. ~~At~~ **Effective for taxable years beginning before January 1, 2015, at** the

1 election of the taxpayer a net operating loss deduction as determined in Subsection
 2 **B of this Section** may be a net operating loss ~~carry-back~~ **carryback** to each of the
 3 three taxable years preceding the taxable year of such loss. Such election shall be
 4 made in accordance with rules and regulations prescribed by the Secretary of
 5 Revenue and Taxation. The first period to which a net operating loss may be carried
 6 under this provision is taxable years beginning on or after January 1, 1980. **The**
 7 **provisions of this Subsection shall not apply to taxable years beginning January**
 8 **1, 2015, or thereafter.**

9 F. A taxpayer may request a tentative refund resulting from the election
 10 provided in ~~R.S. 47:246(E)~~ **Subsection E of this Section** using the forms and in the
 11 manner prescribed by the secretary. If the tentative refund is paid, the secretary may
 12 recover any amount, to the extent of the tentative refund, determined not to be an
 13 overpayment through any procedure provided in R.S. 47:1561 within two years from
 14 December 31~~st~~ **thirty-first** of the year in which the refund was paid. Any amount
 15 determined not to have been overpaid shall bear interest at the rate provided in R.S.
 16 47:1601 computed from the date the tentative refund was issued until payment is
 17 made by the taxpayer. **The provisions of this Subsection shall not apply to**
 18 **taxable years beginning January 1, 2015, or thereafter.**

19 G. Any amount actually refunded, tentative or otherwise, as an overpayment
 20 resulting from a net operating loss ~~carry-back~~ **carryback** shall bear interest at the
 21 rate provided in R.S. 47:1624 computed ninety days after the date the request for
 22 tentative refund or claim for refund (amended return) is filed, or from ninety days
 23 after the due date, without regard to extensions of time, to file of the loss year return,
 24 whichever is later. **The provisions of this Subsection shall not apply to taxable**
 25 **years beginning January 1, 2015, or thereafter.**

26 * * *

27 §287.86. Net operating loss deduction

28 A. Deduction from Louisiana net income. Except as otherwise provided,
 29 there shall be allowed for the taxable year an adjustment reducing Louisiana net

1 income in an amount equal to the aggregate of:

2 (1) The net operating loss carryovers to such year, plus

3 (2) The net operating loss carrybacks to such year. **No carrybacks shall be**
4 **allowed for taxable years beginning January 1, 2015, or thereafter.**

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

7 (1) ~~A~~ **For taxable years beginning before January 1, 2015, a** net operating
8 loss carryback to each of the three taxable years preceding the taxable year of such
9 loss, unless carryback treatment is relinquished pursuant to R.S. 47:287.86(D) **the**
10 **provisions of Subsection D of this Section. No carrybacks shall be allowed for**
11 **taxable years beginning January 1, 2015, or thereafter.**

12 (2) For losses incurred for taxable years beginning before January, 1984, a
13 net operating loss carryover to each of the five taxable years following the taxable
14 year of such loss. For losses incurred for taxable years beginning on or after January
15 1, 1984, **and before January 1, 2015,** a net operating loss carryover to each of the
16 fifteen taxable years following the taxable year of such loss. **For losses incurred**
17 **for taxable years beginning January 1, 2015, or thereafter, a net operating loss**
18 **carryover to each of the twenty taxable years following the taxable year of such**
19 **loss.**

20 C. Manner and amount of carrybacks and carryovers. The entire amount of
21 Louisiana net loss for any taxable year **beginning before January 1, 2015,**
22 hereinafter the "loss year", shall be carried back to the earliest of the taxable years
23 allowed, unless an election to relinquish carryback treatment is made, in which case
24 such loss shall be carried to the earliest of the taxable years allowed for carryovers.
25 **For taxable years beginning on January 1, 2015, or thereafter, the net loss may**
26 **be carried forward only.** The portion of such loss which shall be carried to each of
27 the other taxable years allowed by Subsection B **of this Section** shall be the excess,
28 if any, of the amount of such loss over the aggregate of the Louisiana taxable income
29 for each of the prior taxable years to which such loss may be carried. For the

1 purposes of this Subsection:

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

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

9 D. Election to relinquish carryback. ~~Any~~ **Effective for taxable years**
10 **beginning before January 1, 2015, 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. Statement with tax return. Every corporation claiming a net operating loss
14 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 F. Adjustment dependent upon Louisiana net loss carryback. If in computing
19 the net operating loss deduction the taxpayer is entitled to a carryback which cannot
20 be ascertained at the time the return is due, the deduction, if any, shall be computed
21 without regard to such carryback. When the taxpayer ascertains the correct amount
22 of such carryback, a claim for credit or refund of the overpayment, if any, resulting
23 from the failure to compute the deduction for the taxable year with the inclusion of
24 such carryback may be filed within the prescriptive period, or the taxpayer may file
25 an application for a tentative refund as provided in Subsection G. **The provisions of**
26 **this Subsection shall not apply to taxable years beginning January 1, 2015, or**
27 **thereafter.**

28 G. Tentative refund. ~~A~~ **Effective for taxable years beginning before**
29 **January 1, 2015, a** taxpayer may request a tentative refund resulting from the

1 application of a net operating loss carryback in the manner and with forms prescribed
2 by the secretary. If the tentative refund is paid, the secretary may recover any amount
3 thereof determined not to be an overpayment through any collection remedy
4 authorized by R.S. 47:1561 within two years from December thirty-first of the year
5 in which the refund was paid. Any tentatively refunded amount determined not to be
6 an overpayment shall bear interest at the rate provided in R.S. 47:1601, which shall
7 be computed from the date the tentative refund was issued to the date payment is
8 received by the secretary.

9 H. Interest on refunds. Any Effective for taxable years beginning before
10 January 1, 2015, any amount actually refunded as an overpayment resulting from
11 the application of a net operating loss carryback, tentative or otherwise, shall bear
12 interest at the rate provided in R.S. 47:1624, which shall be computed:

13 (1) From the latest of the following dates:

14 (a) Ninety days after the date the request for tentative refund or claim for
15 refund (amended return) is filed.

16 (b) Ninety days after the due date of the loss year return without regard to
17 extensions of time to file.

18 (2) To the date such refund is issued by the secretary.

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

24 (2) Net operating losses generated after the effective date of a reorganization
25 cannot be carried back to a corporation that does not survive the reorganization,
26 unless the reorganization is a reorganization under Internal Revenue Code Section
27 368(a)(1)(F). For purposes of this Part, the surviving entity of a reorganization under
28 Internal Revenue Code Section 368(a)(1)(F) is the same entity as the transferor
29 entity, and the reorganization will be treated as a mere change in form.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Laura Gail Sullivan.

	DIGEST	
SB 180 Original	2015 Regular Session	Adley

Present law allows a state corporate income tax deduction for net operating losses.

Proposed law retains present law.

Present law allows the deduction to be carried back for up to three years and to be carried forward for up to five years by nonresident corporations and up to 15 years by La. corporations. Allows a refund resulting from application as a carryback.

For taxable years beginning on or after Jan. 1, 2015, proposed law allows the deduction to be carried forward for up to 20 years. Prohibits the carryback and eliminates the refund resulting from application as a carryback.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:246 and 287.86)