

2015 Regular Session

HOUSE BILL NO. 218

BY REPRESENTATIVE BROADWATER

TAX/CORP INCOME: Provides with respect to 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, 1621(B)(7), and 1623(C), (D), and
3 (E) and to enact R.S. 47:181(B)(3), relative to corporate income tax; to provide for
4 the net operating loss deduction, to eliminate net operating loss deduction carry back,
5 to increase net operating loss deduction carry forward; to provide for an effective
6 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, 1621(B)(7), and 1623(C), (D), and (E)
9 are hereby amended and reenacted and R.S. 47:181(B)(3) is hereby enacted to read as
10 follows:

11 §181. Imposition of tax on estates and trusts

12 * * *

13 B. Computation and payment.

14 * * *

15 (3) The amount of a net operating loss for any tax year beginning on or after
16 January 1, 2000, may be deducted from net income in any of the twenty years
17 immediately following the year in which the loss occurred.

18 * * *

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

20 * * *

1 (2) For losses incurred for taxable years beginning before January 1, 1984,
2 a net operating loss carryover to each of the five taxable years following the taxable
3 year of such loss.

4 (3) For losses incurred for taxable years beginning on or after January 1,
5 1984 and before January 1, 2000, a net operating loss carryover to each of the fifteen
6 taxable years following the taxable year of such loss.

7 (4) For losses incurred for taxable years beginning on or after January 1,
8 2000, a net operating loss carryover to each of the twenty taxable years following the
9 taxable year of such loss.

10 C. Manner and amount of ~~carrybacks and~~ carryovers. The entire amount of
11 Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried
12 ~~back over~~ over to the earliest of the taxable years allowed, ~~unless an election to relinquish~~
13 ~~carryback treatment is made, in which case such loss shall be carried to the earliest~~
14 ~~of the taxable years allowed for carryovers.~~ The portion of such loss which shall be
15 carried to each of the other taxable years allowed by Subsection B shall be the
16 excess, if any, of the amount of such loss over the aggregate of the Louisiana taxable
17 income for each of the ~~prior~~ taxable years to which such loss may be carried. For the
18 purposes of this Subsection:

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

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

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

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

6 ~~F. Adjustment dependent upon Louisiana net loss carryback. If in computing
7 the net operating loss deduction the taxpayer is entitled to a carryback which cannot
8 be ascertained at the time the return is due, the deduction, if any, shall be computed
9 without regard to such carryback. When the taxpayer ascertains the correct amount
10 of such carryback, a claim for credit or refund of the overpayment, if any, resulting
11 from the failure to compute the deduction for the taxable year with the inclusion of
12 such carryback may be filed within the prescriptive period, or the taxpayer may file
13 an application for a tentative refund as provided in Subsection G.~~

14 ~~G. Tentative refund. A taxpayer may request a tentative refund resulting
15 from the application of a net operating loss carryback in the manner and with forms
16 prescribed by the secretary. If the tentative refund is paid, the secretary may recover
17 any amount thereof determined not to be an overpayment through any collection
18 remedy authorized by R.S. 47:1561 within two years from December thirty-first of
19 the year in which the refund was paid. Any tentatively refunded amount determined
20 not to be an overpayment shall bear interest at the rate provided in R.S. 47:1601,
21 which shall be computed from the date the tentative refund was issued to the date
22 payment is received by the secretary.~~

23 ~~H. Interest on refunds. Any amount actually refunded as an overpayment
24 resulting from the application of a net operating loss carryback, tentative or
25 otherwise, shall bear interest at the rate provided in R.S. 47:1624, which shall be
26 computed:~~

27 ~~(1) From the latest of the following dates:~~

28 ~~(a) Ninety days after the date the request for tentative refund or claim for
29 refund (amended return) is filed.~~

1 ~~in lieu of the three-year period of limitation prescribed in Subsection A of this~~
 2 ~~Section, the period shall be the period which ends three years from the thirty-first~~
 3 ~~day of December of the year in which the tax for the loss year would become due or~~
 4 ~~the period prescribed in Subsection B or E of this Section with respect to such~~
 5 ~~taxable year, whichever expires later.~~

6 ~~D. Provided that in any case where a refund of taxes imposed by R.S. 47:295~~
 7 ~~relates to an overpayment attributable to a net operating loss deduction carry-back~~
 8 ~~election, in lieu of the three-year period of limitation prescribed in Subsection A of~~
 9 ~~this Section, the period shall be the period which ends three years from the~~
 10 ~~thirty-first day of December of the year in which the tax for the loss year would~~
 11 ~~become due, or the period prescribed in Subsection B or E of this Section with~~
 12 ~~respect to such taxable year, whichever expires later. The provisions of this~~
 13 ~~Subsection would be effective for net operating loss deduction carry-back elections~~
 14 ~~made for taxable periods ending on or after December 31, 1987.~~

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

17 (1) A written agreement entered into between a taxpayer and the United
 18 States Internal Revenue Service suspending the prescription of federal income tax;
 19 or

20 (2) For any period from the time of the commencement of an audit of a
 21 taxpayer by the United States Internal Revenue Service until one year from the time
 22 the secretary of the Department of Revenue is notified by said taxpayer or the federal
 23 government of an agreed change to the taxpayer's United States income tax return.

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 218 Original

2015 Regular Session

Broadwater

Abstract: Eliminates the three year carryback of the net operating loss deduction for purposes of calculating corporate income tax liability and increases the carryover period from 15 years to 20 years.

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.

Proposed law retains present law but changes the time allowed for carryover of the net operating loss from 15 years to 20 years.

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 and increases the carry over period from 15 years to 20 years.

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, 1621(B)(7), and 1623(C), (D), and (E); Adds R.S. 47:181(B)(3))