

2020 First Extraordinary Session

SENATE BILL NO. 22

BY SENATOR MCMATH

TAX/INCOME/CORPORATE. Authorizes a net operating loss carry-back for purposes of the corporation income tax. (Item #20) (7/1/20)

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AN ACT

To amend and reenact R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and 1623(C) and to enact R.S. 47:287.86(F), relative to the net operating loss deduction; to authorize the carry-back of certain corporate income tax deductions for purposes of calculating corporate income tax; to provide for the administration of the deduction; to provide for certain adjustments; to authorize the refund of certain amounts; to authorize the payment of interest on certain amounts; to provide for time limitations for the payment of certain claims; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and 1623(C) are hereby amended and reenacted and R.S. 47:287.86(F) is hereby enacted to read as follows:

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

\* \* \*

E.(1) For all claims for this deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates, no carry-back

1 election shall be allowed.

2 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,  
 3 beginning in taxable years beginning on and after January 1, 2017, through  
 4 taxable years beginning before January 1, 2022, at the election of the taxpayer,  
 5 a net operating loss deduction as determined in Subsection B of this Section may  
 6 include a net operating loss carry-back to each of the taxable years preceding  
 7 the taxable year of the loss. The secretary of the Department of Revenue shall  
 8 promulgate rules in accordance with the Administrative Procedure Act as are  
 9 necessary to allow for the election by the taxpayer of a net operating loss  
 10 carry-back. The first period to which a net operating loss may be carried  
 11 pursuant to this Paragraph is the first taxable year beginning on or after  
 12 January 1, 2017.

13 \* \* \*

14 G.(1) For all claims for this deduction on any return filed on or after July 1,  
 15 2015, regardless of the taxable year to which the return relates, no refund shall be  
 16 allowed.

17 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection,  
 18 beginning in taxable years beginning on and after January 1, 2017, through  
 19 taxable years beginning before January 1, 2022, any amount actually refunded,  
 20 tentative or otherwise, as an overpayment resulting from a net operating loss  
 21 carry-back shall bear interest at the rate provided in R.S. 47:1624 computed  
 22 ninety days after the date the request for tentative refund or claim for refund  
 23 on an amended return is filed or ninety days after the due date, without regard  
 24 to extensions of time, of the loss year return, whichever is later.

25 \* \* \*

26 §287.86. Net operating loss deduction

27 A. Deduction from Louisiana net income. (1) Except as otherwise provided,  
 28 for all claims for this deduction on any return filed on or after July 1, 2015,  
 29 regardless of the taxable year to which the return relates, there shall be allowed for

1 the taxable year a deduction reducing Louisiana net income in an amount equal to  
2 seventy-two percent of the net operating loss carryovers to such year, but the  
3 deduction shall never exceed seventy-two percent of Louisiana net income.

4 **(2) Notwithstanding the provisions of Paragraph (1) of this Subsection,**  
5 **beginning in taxable years beginning on and after January 1, 2017, through**  
6 **taxable years beginning before January 1, 2022, there shall be allowed for the**  
7 **taxable year an adjustment reducing Louisiana net income in an amount equal**  
8 **to the aggregate of net operating loss carryovers to the taxable year and the net**  
9 **operating loss carry-backs to the taxable year.**

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

15 **(2) Beginning in tax years beginning on and after January 1, 2017,**  
16 **through tax years beginning before January 1, 2022, a net operating loss**  
17 **carry-back shall be allowed to each taxable year preceding the taxable year of**  
18 **the loss, unless carry-back treatment is relinquished pursuant to Subsection F**  
19 **of this Section.**

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

28 **(2) Beginning in tax years beginning on and after January 1, 2017, through tax years**  
29 **beginning before January 1, 2022, the entire amount of Louisiana net loss for**

1 any taxable year, hereinafter the "loss year", shall be carried back to the  
 2 earliest of the taxable years allowed unless an election to relinquish carry-back  
 3 treatment is made, in which case the loss shall be carried back to the earliest of  
 4 the taxable years allowed for carry-backs. The portion of the loss which shall  
 5 be carried to each of the other taxable years allowed by Paragraph (B)(2) of this  
 6 Section shall be the excess, if any, of the amount of the loss over the aggregate  
 7 of the Louisiana taxable income for each of the taxable years to which the loss  
 8 may be carried. For the purposes of this Subsection:

9 ~~(1)~~(a) Louisiana taxable income shall not be adjusted to less than zero.

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

16 \* \* \*

17 **F. Net operating loss carry-backs. Beginning in taxable years beginning**  
 18 **on and after January 1, 2017, through tax years beginning before January 1,**  
 19 **2022, the following provisions concerning net operation loss carry-backs shall**  
 20 **apply:**

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

25 **(2) Adjustment dependent upon Louisiana net loss carry-back. If in**  
 26 **computing the net operating loss deduction, the taxpayer is entitled to a**  
 27 **carry-back which cannot be ascertained at the time the return is due, the**  
 28 **deduction, if any, shall be computed without regard to the carry-back. When**  
 29 **the taxpayer ascertains the correct amount of the carry-back, a claim for credit**

1 or refund of the overpayment, if any, resulting from the failure to compute the  
2 deduction for the taxable year with the inclusion of the carry-back may be filed  
3 within the prescriptive period, or the taxpayer may file an application for a  
4 tentative refund as provided for in Paragraph (4) of this Subsection.

5 (3) Net operating for reorganized businesses. Net operating losses  
6 generated after the effective date of a reorganization cannot be carried back to  
7 a corporation that does not survive the reorganization, unless the reorganization  
8 is a reorganization under Internal Revenue Code Section 368(a)(1)(F). For  
9 purposes of this Part, the surviving entity of a reorganization under Internal  
10 Revenue Code Section 368(a)(1)(F) is the same entity as the transferor entity,  
11 and the reorganization will be treated as a mere change in form.

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

22 (5) Interest on refunds. Any amount actually refunded as an  
23 overpayment resulting from the application of a net operating loss carry-back,  
24 tentative or otherwise, shall bear interest at the rate provided in R.S. 47:1624,  
25 which shall be computed from the later of the following dates:

26 (a) Ninety days after the date the request for tentative refund or claim  
27 for refund on an amended return is filed.

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

1 \* \* \*

2 §1621. Refunds of overpayments authorized

3 \* \* \*

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

6 \* \* \*

7 (7) With regard to a Louisiana income tax overpayment, the overpayment  
8 resulted from application of a Louisiana net operating loss **carry-back or** carryover  
9 for all claims for this deduction on any return filed on or after July 1, 2015,  
10 regardless of the taxable year to which the return relates.

11 \* \* \*

12 §1623. Prescription of refunds or credits

13 \* \* \*

14 C.(1) No refund shall be allowed for any claim for this deduction on any  
15 return filed on or after July 1, 2015, regardless of the taxable year to which the return  
16 relates.

17 **(2) Notwithstanding the provisions of Paragraph (1) of this Subsection,**  
18 **beginning in tax years beginning on and after January 1, 2017, through tax**  
19 **years beginning before January 1, 2022, in any case where a refund relates to**  
20 **an overpayment attributable to a net operating loss deduction carry-back**  
21 **election made pursuant to R.S. 47:246(E) or 287.86, in lieu of the three-year**  
22 **period of limitation prescribed in Subsection A of this Section, the period shall**  
23 **be the period which ends three years from the thirty-first day of December of**  
24 **the year in which the tax for the loss year would become due or the period**  
25 **prescribed in Subsection B or E of this Section with respect to the taxable year,**  
26 **whichever expires later.**

27 \* \* \*

28 Section 2. This Act shall become effective on July 1, 2020; if vetoed by the governor  
29 and subsequently approved by the legislature, this Act shall become effective on July 1,

1 2020, or on the day following such approval by the legislature, whichever is later.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

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DIGEST

SB 22 Original

2020 First Extraordinary Session

McMath

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 a net operating loss deduction to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022.

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 operative 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, 2017, through taxable years commencing before Jan. 1, 2022, an adjustment reducing La. net income in an amount equal to the aggregate of net operating loss carryovers to the taxable year and the net operating loss carry-backs to the taxable year unless carry-back treatment is relinquished by the taxpayer.

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, 2017, through taxable years commencing before Jan. 1, 2022, 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))