2015 Regular Session

HOUSE BILL NO. 796

#### BY REPRESENTATIVE FANNIN

# TAX/CORP INCOME: Eliminates the carryback provisions for the net operating loss deduction for the purposes of 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 carryback to each of the
16	three taxable years preceding the taxable year of such loss. Such election shall be
17	made in accordance with rules and regulations prescribed by the Secretary of
18	Revenue and Taxation. The first period to which a net operating loss may be carried
19	under this provision is taxable years beginning on or after January 1, 1980.
20	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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 carryback shall bear interest at the rate provided in
4	R.S. 47:1624 computed ninety days after the date the request for tentative refund or
5	claim for refund (amended return) is filed, or from ninety days after the due date,
6	without 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 <del>carrybacks and</del> 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	H. 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	<del>368(a)(1)(F). For purposes of this Part, the surviving entity of a reorganization under</del>

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.

### 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 796 Original	2015 Regular Session	Fannin
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Abstract: Eliminates the three year carryback of the net operating loss deduction for purposes of calculating corporate income tax liability.

<u>Present law</u> provides for imposition, computation, and payment of income tax for estates and property held in trust. <u>Present law</u> 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.

<u>Present law</u> 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.

<u>Proposed law</u> repeals the three year carryback provisions of <u>present law</u>.

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<u>Present law</u> 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.

<u>Proposed law</u> retains <u>present law</u> but repeals provisions relative to net operating loss carryback.

<u>Present law</u> 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.

<u>Proposed law</u> retains <u>present law</u> 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.), and to repeal R.S. 47:287.86(F), (G) and (H), and 1623(C) and (D))