

2015 Regular Session

HOUSE BILL NO. 383

BY REPRESENTATIVES JACKSON, BURRELL, COX, GAINES, HALL, HUNTER,  
JAMES, TERRY LANDRY, PIERRE, SMITH, AND WOODRUFF

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), (C), (D), and (E),  
3 1621(B)(7), and 1623(C) and to repeal R.S. 47:287.86(F), (G), (H), and (I), relative  
4 to corporate income tax; to provide for the net operating loss deduction; to eliminate  
5 net operating loss deduction carryback; to provide for an effective date; and to  
6 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), (C), (D), and (E), 1621(B)(7),  
9 and 1623(C) are hereby amended and reenacted to read as follows:

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

11 \* \* \*

12 E. ~~At the election of the taxpayer a net operating loss deduction as~~  
13 ~~determined in Subsection B may be a net operating loss carry-back to each of the~~  
14 ~~three taxable years preceding the taxable year of such loss. Such election shall be~~  
15 ~~made in accordance with rules and regulations prescribed by the Secretary of~~  
16 ~~Revenue and Taxation. The first period to which a net operating loss may be carried~~  
17 ~~under this provision is taxable years beginning on or after January 1, 1980. For all~~  
18 ~~claims for this deduction on any return filed on or after July 1, 2015, regardless of~~  
19 ~~the taxable year to which the return relates, no carry-back election shall be allowed.~~

20 \* \* \*

1               G. ~~Any amount actually refunded, tentative or otherwise, as an overpayment~~  
2 ~~resulting from a net operating loss carry-back shall bear interest at the rate provided~~  
3 ~~in R.S. 47:1624 computed ninety days after the date the request for tentative refund~~  
4 ~~or claim for refund (amended return) is filed, or from ninety days after the due date,~~  
5 ~~without regard to extensions of time, to file of the loss year return, whichever is later.~~  
6 For all claims for this deduction on any return filed on or after July 1, 2015,  
7 regardless of the taxable year to which the return relates, no refund shall be allowed.

8   \*           \*           \*

9               §287.86. Net operating loss deduction

10              A. Deduction from Louisiana net income. Except as otherwise provided, for  
11 all claims for this deduction on any return filed on or after July 1, 2015, regardless  
12 of the taxable year to which the return relates, there shall be allowed for the taxable  
13 year an adjustment reducing Louisiana net income in an amount equal to the  
14 aggregate of:

- 15              (1) ~~The net operating loss carryovers to such year, plus,~~
- 16              (2) ~~The net operating loss carrybacks to such year.~~

17              B. Net operating loss carrybacks and carryovers. ~~The~~ For all claims for this  
18 deduction on any return filed on or after July 1, 2015, regardless of the taxable year  
19 to which the return relates, the taxable years to which a Louisiana net loss may be  
20 carried shall be:

- 21              (1) ~~A net operating loss carryback to each of the three taxable years~~  
22 ~~preceding the taxable year of such loss, unless carryback treatment is~~  
23 ~~relinquished pursuant to R.S. 47:287.86(D).~~
- 24              (2) ~~For losses incurred for taxable years beginning before January, 1984, a~~  
25 ~~net operating loss carryover to each of the five taxable years following the taxable~~  
26 ~~year of such loss. For losses incurred for taxable years beginning on or after January~~  
27 ~~1, 1984, a net operating loss carryover to each of the fifteen taxable years following~~  
28 the taxable year of such loss.

1 C. Manner and amount of ~~carrybacks and carryovers~~. The For all claims for  
 2 this deduction on any return filed on or after July 1, 2015, regardless of the taxable  
 3 year to which the return relates, the entire amount of Louisiana net loss for any  
 4 taxable year, hereinafter the "loss year", shall be carried ~~back~~ over to the earliest of  
 5 the taxable years allowed, ~~unless an election to relinquish carryback treatment is~~  
 6 ~~made, in which case such loss shall be carried to the earliest of the taxable years~~  
 7 ~~allowed for carryovers~~. The portion of such loss which shall be carried to each of  
 8 the other taxable years allowed by Subsection B shall be the excess, if any, of the  
 9 amount of such loss over the aggregate of the Louisiana taxable income for each of  
 10 the ~~prior~~ taxable years to which such loss may be carried. For the purposes of this  
 11 Subsection:

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

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

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

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

27 \* \* \*

28 F. E. Net operating loss carryovers.

1           (1) Notwithstanding any other provisions of this Chapter to the contrary, for  
 2           all claims for this deduction on any return filed on or after July 1, 2015, regardless  
 3           of the taxable year to which the return relates, the acquiring corporation shall  
 4           succeed to and take into account, as of the close of the day of distribution or transfer,  
 5           the aggregate net operating loss carryovers of the distributors or transferor  
 6           corporation as determined under this Section, subject to federal law and the  
 7           limitations provided thereunder.

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

14                                 \*       \*       \*

15          §1621. Refunds of overpayments authorized

16                                 \*       \*       \*

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

19                                 \*       \*       \*

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

22                                 \*       \*       \*

23          §1623. Prescription of refunds or credits

24                                 \*       \*       \*

25           C. ~~Provided that in any case where a refund relates to an overpayment~~  
 26           ~~attributable to a net operating loss deduction carry-back election made pursuant to~~  
 27           ~~R.S. 47:246(E) or 287.86, for taxable periods ending on or after December 31, 1983,~~  
 28           ~~in lieu of the three-year period of limitation prescribed in Subsection A of this~~  
 29           ~~Section, the period shall be the period which ends three years from the thirty-first~~

1        day of December of the year in which the tax for the loss year would become due or  
 2        the period prescribed in Subsection B or E of this Section with respect to such  
 3        taxable year, whichever expires later. No refund shall be allowed for any claim for  
 4        this deduction on any return filed on or after July 1, 2015, regardless of the taxable  
 5        year to which the return relates.

\* \* \*

7        Section 2. To repeal R.S. 47:287.86(F), (G), (H), and (I) in their entirety.

8        Section 3. The provisions of this Act shall apply to all claims for this deduction on  
 9        any return filed on or after July 1, 2015, regardless of the taxable year to which the return  
 10       relates.

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 383 Engrossed

2015 Regular Session

Jackson

**Abstract:** For any claim filed on or after July 1, 2015, regardless of the taxable year to which the return relates, 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 beginning with any claim filed on or after July 1, 2015, regardless of the taxable year to which the return relates.

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 for any claim filed on or after July 1, 2015, regardless of the taxable year to which the return relates.

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 a net operating loss deduction carryback election.

Proposed law retains present law but repeals provisions relative to the net operating loss deduction carryback election for any claim filed on or after July 1, 2015, regardless of the taxable year to which the return relates.

Proposed law applies to all claims for the net operating loss deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates.

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Delete application of proposed law to tax years beginning on or after Jan. 1, 2015.
2. Add applicability of proposed law to all returns filed on or after July 1, 2015, regardless of the taxable year to which the return relates.