

2017 Regular Session

HOUSE BILL NO. 363

BY REPRESENTATIVE IVEY

TAX/CORP INCOME: Caps the amount of losses a taxpayer may claim on certain tax returns for the net operating loss deduction and repeals the deduction for certain wage expenses

1 AN ACT
2 To amend and reenact R.S. 47:287.86(A), (B), and (C)(2) and to repeal R.S.
3 47:287.73(C)(4), relative to corporate income tax; to provide for the deduction for
4 net operating loss; to limit application of the net operating loss deduction; to extend
5 the allowable carryover period; to provide for the order of loss years from which a
6 net operating loss may be carried over; to repeal the deduction for wage expenses;
7 to provide for applicability; to provide for effectiveness; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:287.86(A), (B), and (C)(2) are hereby amended and reenacted to
11 read as follows:

12 §287.86. Net operating loss deduction
13 A. Deduction from Louisiana net income. (1) Except as otherwise provided,
14 for all claims for this deduction on any return filed on or after July 1, 2015,
15 ~~regardless of the taxable year to which the return relates,~~ relating to any taxable year
16 beginning before January 1, 2018, there shall be allowed for the taxable year a
17 deduction reducing Louisiana net income in an amount equal to seventy-two percent
18 of the net operating loss carryovers to such year, but the deduction shall never
19 exceed seventy-two percent of Louisiana net income. The maximum amount of net

1 operating loss carryover that may be applied in each taxable year shall be as
2 calculated in Paragraph (2) of this Subsection.

3 (2) For all taxable periods beginning on or after January 1, 2018, the amount
4 of net operating loss carryover that may be applied in each taxable year shall be
5 determined based upon the taxpayer's total amount of net operating loss available.
6 Any amount of net operating loss in excess of the amounts allowed pursuant to this
7 Subsection may be carried over in the manner provided for in Subsection B of this
8 Section. In each taxable year for which the net operating loss carryover is claimed,
9 the portion of net operating loss carryover that may be applied in that taxable year
10 shall be as follows:

11 (a) If the total amount of net operating loss carryover available to the
12 taxpayer is two hundred fifty million dollars or greater, the deduction shall be limited
13 and shall not exceed fifty percent of Louisiana net income for the taxable year.

14 (b) If the total amount of net operating loss carryover available to the
15 taxpayer is at least one hundred million dollars, but less than two hundred fifty
16 million dollars, the deduction shall be limited and shall not exceed sixty percent of
17 Louisiana net income for the taxable year.

18 (c) If the total amount of net operating loss carryover available to the
19 taxpayer is at least fifty million dollars, but less than one hundred million dollars, the
20 deduction shall be limited and shall not exceed seventy percent of Louisiana net
21 income for the taxable year.

22 (d) If the total amount of net operating loss carryover available to the
23 taxpayer is at least twenty-five million dollars, but less than fifty million dollars, the
24 deduction shall be limited and shall not exceed eighty percent of Louisiana net
25 income for the taxable year.

26 (e) If the total amount of net operating loss carryover available to the
27 taxpayer is at least ten million dollars, but less than twenty-five million dollars, the
28 deduction shall be limited and shall not exceed ninety percent of Louisiana net
29 income for the taxable year.

1 Section 2. R.S. 47:287.73(C)(4) is hereby repealed in its entirety.

2 Section 3. Notwithstanding the provisions of Section 6 of Act No. 123 of the 2015
3 Regular Session, R.S. 47:287.73(C)(4) as enacted by Section 3 of Act No. 123 of the 2015
4 Regular Session shall not become effective.

5 Section 4. This Act shall be applicable to all taxable periods beginning on or after
6 January 1, 2018.

7 Section 5. This Act shall take effect on January 1, 2018, and only become operative
8 if the proposed amendment of Article VII of the Constitution of Louisiana contained in the
9 Act which originated as House Bill No. 356 of this 2017 Regular Session of the Legislature
10 is adopted at a statewide election and becomes effective and if the Acts which originated as
11 House Bill Nos. 357, 358, 359, 360, 361, 362, and 364 of this 2017 Regular Session of the
12 Legislature are enacted and become effective.

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 363 Engrossed

2017 Regular Session

Ivey

Abstract: Limits applicability, extends the carryover period, and changes the order of the loss year for the net operating loss deduction to corporate income and repeals the deduction for I.R.C. 280 wage expenses.

Present law provides for a deduction from corporate income tax for 72% of the amount of net operating loss (NOL) incurred in La., but prohibits the amount of the deduction from exceeding 72% of the value of La. net income. Any amount of net operating loss in excess of the amount that may be deducted may be carried over to each of the 20 taxable years immediately following the tax year of the loss.

Proposed law increases the number of taxable years any excess net operating loss may be carried over from 20 years to 30 years for taxable years beginning on or after Jan. 1, 2018.

Present law requires net operating loss to be applied for purposes of reducing La. net income in order of the year of the loss, beginning with the most recent taxable year.

Proposed law changes present law by requiring net operating loss from the earliest tax year to be applied first.

Proposed law changes the amount of the deduction that may be applied against the taxpayer's tax liability as follows:

- (1) If the taxpayer has \$250M or more of available NOL, the amount of the deduction shall not exceed 50% of the taxable income prior to application of the NOL.

- (2) If the taxpayer has at least \$100M, but less than \$250M, of available NOL, the amount of the deduction shall not exceed 60% of the taxable income prior to application of the NOL.
- (3) If the taxpayer has at least \$50M, but less than \$100M, of available NOL, the amount of the deduction shall not exceed 70% of the taxable income prior to application of the NOL.
- (4) If the taxpayer has at least \$25M, but less than \$50M, of available NOL, the amount of the deduction shall not exceed 80% of the taxable income prior to application of the NOL.
- (5) If the taxpayer has at least \$10M, but less than \$25M, of available NOL, the amount of the deduction shall not exceed 90% of the taxable income prior to application of the NOL.
- (6) If the taxpayer has less than \$10M of available NOL, the amount of the deduction shall not exceed the amount of taxable income prior to application of the NOL.

Present law provides for a deduction from corporate income tax expenses disallowed under I.R.C. Section 280C. Further requires a taxpayer who elects to claim certain credits that are based on an expense to reduce the federal deduction for the expense by the dollar amount of the credit claimed.

Proposed law repeals present law.

Proposed law applies to all taxable years beginning on or after Jan. 1, 2018.

Effective Jan. 1, 2018, if the proposed amendment of Article VII of the Constitution of Louisiana contained in the Act which originated as House Bill No. 356 of this 2017 R.S. of the Legislature is adopted at a statewide election and becomes effective and if the Acts which originated as House Bill Nos. 357, 358, 359, 360, 361, 362, and 364 of this 2017 R.S. of the Legislature are enacted and become effective.

(Amends R.S. 47:287.86(A), (B), and (C)(2); Repeals R.S. 47:287.73(C)(4))

Summary of Amendments Adopted by House

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

1. Increase the carryover period for net operating loss deduction from 20 years to 30 years for taxable years beginning on and after Jan. 1, 2018.
2. Change the application order of net operating loss from the most recent year to the earliest year of loss.
3. Add contingent effectiveness on Jan. 1, 2018, for proposed law if the proposed amendment of Art. VII of the Constitution of La. contained in the Act which originated as House Bill No. 356 of this 2017 R.S. of the Legislature is adopted at a statewide election and becomes effective and if HB Nos. 357, 358, 359, 360, 361, 362, and 364 of this 2017 R.S. of the Legislature are enacted and become effective.
4. Make technical changes.