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	* * *

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1	E. At For losses incurred for taxable years prior to January 1, 2015, at the
2	election of the taxpayer, a net operating loss deduction as determined in Subsection
3	B of this Section, may be a net operating loss carry-back to each of the three taxable
4	years preceding the taxable year of such loss. Such election shall be made in
5	accordance with rules and regulations prescribed by the Secretary of Revenue and
6	Taxation. The first period to which a net operating loss may be carried under this
7	provision is taxable years beginning on or after January 1, 1980.
8	* * *
9	G. Any For losses incurred for taxable years prior to January 1, 2015, any
10	amount actually refunded, tentative or otherwise, as an overpayment resulting from
11	a net operating loss carry-back shall bear interest at the rate provided in R.S. 47:1624
12	computed ninety days after the date the request for tentative refund or claim for
13	refund (amended return) is filed, or from ninety days after the due date, without
14	regard to extensions of time, to file of the loss year return, whichever is later.
15	* * *
16	§287.86. Net operating loss deduction
17	A. Deduction from Louisiana net income. Except as otherwise provided, for
18	losses incurred for taxable years beginning on or after January 1, 2015, there shall
19	be allowed for the taxable year an adjustment reducing Louisiana net income in an
20	amount equal to the aggregate of:
21	(1) The net operating loss carryovers to such year, plus.
22	(2) The net operating loss carrybacks to such year.
23	B. Net operating loss carrybacks and carryovers. The taxable years to which
24	a Louisiana net loss may be carried shall be:
25	(1) A For losses incurred for taxable years beginning on or after January 1,
26	1984, and before January 1, 2015, net operating loss carryback to each of the three
27	taxable years preceding the taxable year of such loss, unless carryback treatment is
28	relinquished pursuant to R.S. 47:287.86(D).

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 <del>carrybacks and</del> carryovers. The entire amount of
11	Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried
12	back 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.

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1	(b) Ninety days after the due date of the loss year return without regard to
2	extensions of time to file.
3	(2) To the date such refund is issued by the secretary.
4	H. E. Net operating loss carryovers.
5	(1) Notwithstanding any other provisions of this Chapter to the contrary, the
6	acquiring corporation shall succeed to and take into account, as of the close of the
7	day of distribution or transfer, the aggregate net operating loss carryovers of the
8	distributors or transferor corporation as determined under this Section, subject to
9	federal law and the limitations provided thereunder.
10	(2) Net operating losses generated after the effective date of a reorganization
11	cannot be carried back to a corporation that does not survive the reorganization,
12	unless the reorganization is a reorganization under Internal Revenue Code Section
13	<del>368(a)(1)(F).</del> For purposes of this Part, the surviving entity of a reorganization under
14	Internal Revenue Code Section 368(a)(1)(F) is the same entity as the transferor
15	entity, and the reorganization will be treated as a mere change in form.
16	* * *
17	§1621. Refunds of overpayments authorized
18	* * *
19	B. The secretary shall make a refund of each overpayment where it is
20	determined that:
21	* * *
22	(7) With regard to a Louisiana income tax overpayment, the overpayment
23	resulted from application of a Louisiana net operating loss carryback or carryover.
24	* * *
25	§1623. Prescription of refunds or credits
26	* * *
27	C. Provided that in any case where a refund relates to an overpayment
28	attributable to a net operating loss deduction carry-back election made pursuant to
29	R.S. 47:246(E) or 287.86, for taxable periods ending on or after December 31, 1983,

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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 $\underline{C}$ .
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.

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

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

<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 carry back.

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