

# ACT No. 103

2015 Regular Session

HOUSE BILL NO. 218

BY REPRESENTATIVE BROADWATER

1 AN ACT

2 To amend and reenact R.S. 47:246(E) and (G), 287.86, 1621(B)(7), and 1623(C) and to  
3 enact R.S. 47:181(B)(3), relative to corporate income tax; to provide for the net  
4 operating loss deduction, to eliminate net operating loss deduction carry back, to  
5 increase net operating loss deduction carry forward; to provide for an effective date;  
6 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) are hereby  
9 amended and reenacted and R.S. 47:181(B)(3) is hereby enacted to read as follows:

10 §181. Imposition of tax on estates and trusts

11 \* \* \*

12 B. Computation and payment.

13 \* \* \*

14 (3) The amount of a net operating loss for any tax year beginning on or after  
15 January 1, 2000, may be deducted from net income in any of the twenty years  
16 immediately following the year in which the loss occurred.

17 \* \* \*

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

19 \* \* \*

20 E. ~~At the election of the taxpayer a net operating loss deduction as~~  
21 ~~determined in Subsection B may be a net operating loss carry-back to each of the~~  
22 ~~three taxable years preceding the taxable year of such loss. Such election shall be~~  
23 ~~made in accordance with rules and regulations prescribed by the Secretary of~~  
24 ~~Revenue and Taxation. The first period to which a net operating loss may be carried~~

1 under this provision is taxable years beginning on or after January 1, 1980. For all  
2 claims for this deduction on any return filed on or after July 1, 2015, regardless of  
3 the taxable year to which the return relates, no carry-back election shall be allowed.

4 \* \* \*

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

12 \* \* \*

13 §287.86. Net operating loss deduction

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

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

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

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

1           ~~1, 1984,~~ a net operating loss carryover to each of the ~~fifteen~~ twenty taxable years  
 2           following the taxable year of such loss.

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

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

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

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

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

29                   ~~F. Adjustment dependent upon Louisiana net loss carryback. If in computing~~  
 30          ~~the net operating loss deduction the taxpayer is entitled to a carryback which cannot~~

1 be ascertained at the time the return is due, the deduction, if any, shall be computed  
 2 without regard to such carryback. When the taxpayer ascertains the correct amount  
 3 of such carryback, a claim for credit or refund of the overpayment, if any, resulting  
 4 from the failure to compute the deduction for the taxable year with the inclusion of  
 5 such carryback may be filed within the prescriptive period, or the taxpayer may file  
 6 an application for a tentative refund as provided in Subsection G.

7 ~~G. Tentative refund. A taxpayer may request a tentative refund resulting~~  
 8 ~~from the application of a net operating loss carryback in the manner and with forms~~  
 9 ~~prescribed by the secretary. If the tentative refund is paid, the secretary may recover~~  
 10 ~~any amount thereof determined not to be an overpayment through any collection~~  
 11 ~~remedy authorized by R.S. 47:1561 within two years from December thirty-first of~~  
 12 ~~the year in which the refund was paid. Any tentatively refunded amount determined~~  
 13 ~~not to be an overpayment shall bear interest at the rate provided in R.S. 47:1601,~~  
 14 ~~which shall be computed from the date the tentative refund was issued to the date~~  
 15 ~~payment is received by the secretary.~~

16 ~~H. Interest on refunds. Any amount actually refunded as an overpayment~~  
 17 ~~resulting from the application of a net operating loss carryback, tentative or~~  
 18 ~~otherwise, shall bear interest at the rate provided in R.S. 47:1624, which shall be~~  
 19 ~~computed:~~

20 (1) ~~From the latest of the following dates:~~

21 (a) ~~Ninety days after the date the request for tentative refund or claim for~~  
 22 ~~refund (amended return) is filed.~~

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

25 (2) ~~To the date such refund is issued by the secretary.~~

26 F. E. Net operating loss carryovers.

27 (1) Notwithstanding any other provisions of this Chapter to the contrary, for  
 28 all claims for this deduction on any return filed on or after July 1, 2015, regardless  
 29 of the taxable year to which the return relates, the acquiring corporation shall  
 30 succeed to and take into account, as of the close of the day of distribution or transfer,

1 the aggregate net operating loss carryovers of the distributors or transferor  
2 corporation as determined under this Section, subject to federal law and the  
3 limitations provided thereunder.

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

10 \* \* \*

11 §1621. Refunds of overpayments authorized

12 \* \* \*

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

15 \* \* \*

16 (7) With regard to a Louisiana income tax overpayment, the overpayment  
17 resulted from application of a Louisiana net operating loss ~~carryback or~~ carryover  
18 for all claims for this deduction on any return filed on or after July 1, 2015,  
19 regardless of the taxable year to which the return relates.

20 \* \* \*

21 §1623. Prescription of refunds or credits

22 \* \* \*

23 ~~C. Provided that in any case where a refund relates to an overpayment~~  
24 ~~attributable to a net operating loss deduction carry-back election made pursuant to~~  
25 ~~R.S. 47:246(E) or 287.86, for taxable periods ending on or after December 31, 1983,~~  
26 ~~in lieu of the three-year period of limitation prescribed in Subsection A of this~~  
27 ~~Section, the period shall be the period which ends three years from the thirty-first~~  
28 ~~day of December of the year in which the tax for the loss year would become due or~~  
29 ~~the period prescribed in Subsection B or E of this Section with respect to such~~  
30 ~~taxable year, whichever expires later. No refund shall be allowed for any claim for~~

1           this deduction on any return filed on or after July 1, 2015, regardless of the taxable  
2           year to which the return relates.

3   \*       \*       \*

4           Section 2.(A) Except as provided for in Subsection (B) of this Section, the  
5           provisions of Section 1 of this Act shall apply to a claim for a net operating loss deduction  
6           on a return filed on or after July 1, 2015, regardless of the taxable year to which the return  
7           relates.

8           (B) The provisions of Section 1 of this Act shall not apply to an amended return filed  
9           on or after July 1, 2015, relating to a net operating loss deduction properly claimed on an  
10          original return filed prior to July 1, 2015.

11          Section 3. This Act shall become effective on July 1, 2015.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_