HLS 201ES-34 ENGROSSED

2020 First Extraordinary Session

HOUSE BILL NO. 25

1

BY REPRESENTATIVE WRIGHT

TAX/CORP INCOME: Authorizes carry-back provisions for the net operating loss deduction for purposes of calculating corporate income tax (Item #20)

AN ACT

2	To amend and reenact R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and
3	1623(C) and to enact R.S. 47:287.86(F), relative to the net operating loss deduction;
4	to authorize the carry-back of certain corporate income tax deductions for purposes
5	of calculating corporate income tax; to provide for the administration of the
6	deduction; to provide for certain adjustments; to authorize the refund of certain
7	amounts; to authorize the payment of interest on certain amounts; to provide for time
8	limitations for the payment of certain claims; to provide for effectiveness; and to
9	provide for related matters.
10	Be it enacted by the Legislature of Louisiana:
11	Section 1. R.S. 47:246(E) and (G), 287.86(A), (B), and (C), 1621(B)(7), and
12	1623(C) are hereby amended and reenacted and R.S. 47:287.86(F) is hereby enacted to read
13	as follows:
14	§246. Corporations; deduction from net income from Louisiana sources
15	* * *
16	E.(1) For all claims for this deduction on any return filed on or after July 1,
17	2015, regardless of the taxable year to which the return relates, no carry-back
18	election shall be allowed.
19	(2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
20	beginning in taxable years commencing on and after January 1, 2019, through

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

net operating loss deduction as determined in Subsection B of this Section may include a net operating loss carry-back to each of the taxable years preceding the taxable year of the loss. The secretary of the Department of Revenue shall promulgate rules in accordance with the Administrative Procedure Act as are necessary to allow for the election by the taxpayer of a net operating loss carry-back. The first period to which a net operating loss may be carried pursuant to this Paragraph is the first taxable year beginning on or after January 1, 2019.

* * *

G.(1) For all claims for this deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates, no refund shall be allowed.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, beginning in taxable years commencing on and after January 1, 2019, through taxable years commencing before January 1, 2021, any amount actually refunded, tentative or otherwise, as an overpayment resulting from a net operating loss carry-back shall bear interest at the rate provided in R.S. 47:1624 computed ninety days after the date the request for tentative refund or claim for refund on an amended return is filed or ninety days after the due date, without regard to extensions of time, of the loss year return, whichever is later.

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\$287.86. Net operating loss deduction

A. Deduction from Louisiana net income. (1) Except as otherwise provided, for all claims for this deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates, there shall be allowed for the taxable year a deduction reducing Louisiana net income in an amount equal to seventy-two percent of the net operating loss carryovers to such year, but the deduction shall never exceed seventy-two percent of Louisiana net income.

1	(2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
2	beginning in taxable years commencing on and after January 1, 2019, through
3	taxable years commencing before January 1, 2021, there shall be allowed for the
4	taxable year an adjustment reducing Louisiana net income in an amount equal to
5	seventy-two percent of the aggregate of net operating loss carryovers to the taxable
6	year and the net operating loss carry-backs to the taxable year, but the deduction
7	shall never exceed seventy-two percent of Louisiana net income.
8	B. Net operating loss carrybacks and carryovers. (1) For all claims for this
9	deduction on any return filed on or after July 1, 2015, regardless of the taxable year
10	to which the return relates, the taxable years to which a Louisiana net loss may be
11	carried shall be a net operating loss carryover to each of the twenty taxable years
12	following the taxable year of such loss.
13	(2) Beginning in tax years commencing on and after January 1, 2019,
14	through tax years commencing before January 1, 2021, a net operating loss carry-
15	back shall be allowed to each taxable year preceding the taxable year of the loss,
16	unless carry-back treatment is relinquished pursuant to Subsection F of this Section.
17	C. Manner and amount of <u>carry-backs and</u> carryovers. (1) For all claims for
18	this deduction on any return filed on or after July 1, 2015, regardless of the taxable
19	year to which the return relates, the entire amount of Louisiana net loss for any
20	taxable year, hereinafter the "loss year", shall be carried over to the earliest of the
21	taxable years allowed. The portion of such the loss which shall be carried to each
22	of the other taxable years allowed by Subsection B of this Section shall be the
23	excess, if any, of the amount of such the loss over the aggregate of the Louisiana
24	taxable income for each of the taxable years to which such the loss may be carried.
25	(2) Beginning in tax years commencing on and after January 1, 2019,
26	through tax years commencing before January 1, 2021, the entire amount of
27	Louisiana net loss for any taxable year, hereinafter the "loss year", shall be carried
28	back to the earliest of the taxable years allowed unless an election to relinquish
29	carry-back treatment is made, in which case the loss shall be carried back to the

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(4) of this Subsection.

1 earliest of the taxable years allowed for carry-backs. The portion of the loss which 2 shall be carried to each of the other taxable years allowed by Paragraph (B)(2) of this 3 Section shall be the excess, if any, of the amount of the loss over the aggregate of the 4 Louisiana taxable income for each of the taxable years to which the loss may be 5 carried. For the purposes of this Subsection: 6 (1) Louisiana taxable income shall not be adjusted to less than zero. 7 (2) In calculating the aggregate Louisiana taxable incomes in cases where 8 more than one loss year must be taken into account, the various net operating loss 9 carryovers and carry-backs to such the taxable year are considered to be applied in 10 reduction of Louisiana net income in the order of the taxable years from which such 11 the losses are carried over or carried back, beginning with the loss for the earliest 12 taxable year. 13 14 F. Net operating loss carry-backs. Beginning in taxable years commencing 15 on and after January 1, 2019, through tax years commencing before January 1, 2021, 16 the following provisions concerning net operation loss carry-backs shall apply: (1) Election to relinquish carry-back. Any taxpayer may make an election 17 18 to relinquish the carry-back treatment allowed and have its Louisiana net loss treated 19 only as a carryover. The taxpayer shall make this election in the manner prescribed 20 by the secretary of the Department of Revenue. 21 (2) Adjustment dependent upon Louisiana net loss carry-back. If in 22 computing the net operating loss deduction, the taxpayer is entitled to a carry-back 23 which cannot be ascertained at the time the return is due, the deduction, if any, shall 24 be computed without regard to the carry-back. When the taxpayer ascertains the 25 correct amount of the carry-back, a claim for credit or refund of the overpayment,

if any, resulting from the failure to compute the deduction for the taxable year with

the inclusion of the carry-back may be filed within the prescriptive period, or the

taxpayer may file an application for a tentative refund as provided for in Paragraph

1	(3) Net operating for reorganized businesses. Net operating losses generated
2	after the effective date of a reorganization cannot be carried back to a corporation
3	that does not survive the reorganization, unless the reorganization is a reorganization
4	under Internal Revenue Code Section 368(a)(1)(F). For purposes of this Part, the
5	surviving entity of a reorganization under Internal Revenue Code Section
6	368(a)(1)(F) is the same entity as the transferor entity, and the reorganization will
7	be treated as a mere change in form.
8	(4) Tentative refund. A taxpayer may request a tentative refund resulting
9	from the application of a net operating loss carry-back in the manner and with forms
10	prescribed by the secretary of the Department of Revenue. If the tentative refund is
11	paid, the secretary may recover any amount determined not to be an overpayment
12	through any collection remedy authorized by R.S. 47:1561 within two years from
13	December thirty-first of the year in which the refund was paid. Any tentatively
14	refunded amount determined not to be an overpayment shall bear interest at the rate
15	provided in R.S. 47:1601, which shall be computed from the date the tentative refund
16	was issued to the date payment is received by the secretary of the Department of
17	Revenue.
18	(5) Interest on refunds. Any amount actually refunded as an overpayment
19	resulting from the application of a net operating loss carry-back, tentative or
20	otherwise, shall bear interest at the rate provided in R.S. 47:1624, which shall be
21	computed from the latest of the following dates:
22	(a) Ninety days after the date the request for tentative refund or claim for
23	refund on an amended return is filed.
24	(b) Ninety days after the due date of the loss year return without regard to
25	extensions of time to file.
26	* * *
27	§1621. Refunds of overpayments authorized
28	* * *

1	B. The secretary shall make a refund of each overpayment where it is
2	determined that:
3	* * *
4	(7) With regard to a Louisiana income tax overpayment, the overpayment
5	resulted from application of a Louisiana net operating loss carry-back or carryover
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.
8	* * *
9	§1623. Prescription of refunds or credits
0	* * *
1	C.(1) No refund shall be allowed for any claim for this deduction on any
12	return filed on or after July 1, 2015, regardless of the taxable year to which the return
13	relates.
4	(2) Notwithstanding the provisions of Paragraph (1) of this Subsection,
15	beginning in tax years commencing on and after January 1, 2019, through tax years
16	commencing before January 1, 2021, in any case where a refund relates to an
17	overpayment attributable to a net operating loss deduction carry-back election made
18	pursuant to R.S. 47:246(E) or 287.86, in lieu of the three-year period of limitation
19	prescribed in Subsection A of this Section, the period shall be the period which ends
20	three years from the thirty-first day of December of the year in which the tax for the
21	loss year would become due or the period prescribed in Subsection B or E of this
22	Section with respect to the taxable year, whichever expires later.
23	* * *
24	Section 2. This Act shall become effective on July 1, 2020; if vetoed by the governor
25	and subsequently approved by the legislature, this Act shall become effective on July 1,
26	2020, or on the day following such approval by the legislature, whichever is later.

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 25 Engrossed

2020 First Extraordinary Session

Wright

Abstract: Authorizes a taxpayer to elect to carry back 72% of a net operating loss to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.

<u>Present law</u> prohibits a carry-back election on corporate returns for net operation losses and prohibits refunds for amounts of the net operating loss deduction that exceed a corporation's tax liability.

<u>Proposed law</u> changes <u>present law</u> by authorizing a taxpayer to elect to carry back 72% of a net operating loss to each of the taxable years preceding the taxable year of the corporation's loss for taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.

<u>Proposed law</u> changes <u>present law</u> by requiring any amount refunded as an overpayment resulting from a net operating loss carry-back to bear interest at the rate provided in <u>present law</u> computed 90 days after the date the request for tentative refund or claim for refund is filed or 90 days after the due date, without regard to extensions of time, of the loss year return, whichever is later.

<u>Proposed law</u> authorizes the secretary of the Dept. of Revenue to promulgate rules in accordance with the Administrative Procedure Act as are necessary to allow for the election by the taxpayer of a net operating loss carry-back.

<u>Present law</u> authorizes claims for a net operating loss deduction on returns filed on or after July 1, 2015, reducing La. net income in an amount equal to 72% of the net operating loss carryovers to the taxable year, but the deduction shall never exceed 72% of La. net income. Further authorizes a carryover of net operating losses to each of the 20 taxable years following the taxable year of the loss.

<u>Proposed law</u> retains <u>present law</u> but also provides for a limited exception to <u>present law</u> beginning in taxable years commencing on and after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021, an adjustment reducing La. net income in an amount equal to the aggregate of 72% of net operating loss carryovers to the taxable year and 72% of the net operating loss carry-backs to the taxable year unless carry-back treatment is relinquished by the taxpayer. Further prohibits the net operating loss carry-back deduction from exceeding 72% of the taxpayer's La. net income.

<u>Present law</u> requires the entire amount of La. net loss for any taxable year, to be carried over to the earliest taxable year allowed and the portion of the loss carried to each subsequent taxable year shall be considered the excess, if any, of the amount of the loss over the aggregate of La. taxable income for each of the taxable years to which the loss may be carried. However, in this calculation, La. taxable income shall not be adjusted to less than zero, and, in cases where more than one loss year must be taken into account, the various net operating loss carryovers for the taxable year shall be considered to be applied in the order of the taxable years from which the losses are carried over beginning with the loss for the earliest taxable year.

<u>Proposed law</u> retains <u>present law</u> but specifies that provisions of <u>present law</u> also apply to carry-backs and that the entire amount of La. net loss for any taxable year shall be carried back to the earliest of the taxable years allowed unless an election to relinquish carry-back treatment is made by the taxpayer, in which case the loss shall be carried back to the earliest taxable years allowed for carry-backs.

<u>Proposed law</u> establishes a procedure by which a taxpayer may make an election to relinquish the carry-back treatment and have its La. net loss treated only as a carryover. Provides for an adjustment dependent on La. net loss carry-back if the amount of the net operating loss deduction that the taxpayer is entitled to a carry-back cannot be ascertained at the time the return is due. Provides for tax treatment of the amount of the net operating loss allowed to be carried-back when a business is reorganized.

<u>Proposed law</u> authorizes a taxpayer to request a tentative refund for a net operating loss carry-back that will result in a refund. If the tentative refund is paid, the secretary may recover any amount determined not to be an overpayment through any collection remedy authorized in <u>present law</u> within two years from Dec. 31st of the year in which the refund was paid. Any amount refunded as an overpayment resulting from the application of a net operating loss carry-back, tentative or otherwise, shall bear interest at the rate provided in <u>present law</u> which shall be computed from 90 days after the date the request for tentative refund or claim for refund on an amended return is filed or 90 days after the due date of the loss year return without regard to extensions of time to file, whichever is later.

<u>Proposed law</u> provides that beginning in taxable years commencing on and after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021, if a refund relates to an overpayment attributable to a net operating loss deduction carry-back election, in lieu of the three-year period of limitation for filing a refund claim, the period shall be the period which ends three years from Dec. 31st of the year in which the tax for the loss year would become due or a different period of time provided for in <u>present law</u> with respect to the taxable year, whichever expires later.

Effective July 1, 2020.

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by <u>House Committee on Ways and Means</u> to the <u>original</u> bill:

- 1. Reduce the amount of the net operating loss deduction carry-back <u>from</u> 100% of the taxpayer's loss to 72% of the taxpayer's loss.
- 2. Prohibit the net operating loss carry-back deduction from exceeding 72% of the taxpayer's La. net income.
- 3. Change the taxable years in which proposed law applies from beginning on or after Jan. 1, 2017, through taxable years commencing before Jan. 1, 2022, to taxable years beginning on or after Jan. 1, 2019, through taxable years commencing before Jan. 1, 2021.