

NOTICE OF INTENT

Department of Revenue Policy Services Division

Taxes Not Deductible; Net Operating Loss Deduction; Application of Net Operating Losses Carryover to Otherwise Closed Years
(LAC: 61:I.1122, 1124, and 1125)

Under the authority of R.S. 47:1511 and 287.86 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1122 and to repeal 1124 and 1125. The primary purpose of the proposed regulation is to implement Act 103 of the 2015 Regular Session of the Louisiana Legislature, which repeals the carryback provisions as it relates to net operating losses for corporations.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of the Department of Revenue

Chapter 11. Corporation Income Tax

§1122. Taxes Not Deductible

- A.-B. ...
- C.-D. Repealed.
- E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83, R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:470 (March 2004), amended by the Department of Revenue, Policy Services Division, LR 33:295 (February 2007), amended by the Department of Revenue, Policy Services Division, LR 48:

§1124. Net Operating Loss Deduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.86, R.S. 47:287.785 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:2494 (November 2004), repealed LR 48:

§1125. Application of Net Operating Losses Carryover to Otherwise Closed Years

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.86 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:2290 (October 2010), repealed LR 48:

Family Impact Statement

The proposed amendment of LAC 61:I.1122 and repeal of 1124 and 1125., regarding the repeal of net operating loss carrybacks, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of these proposed rules will have no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

Poverty Statement

The proposed amendments and proposed repeal will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed amendments and proposed repeal will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

Small Business Statement

It is anticipated that the proposed amendments and proposed repeal should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized

regulatory methods in drafting these proposed amendments to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding the proposed amendments and/or repeal to Brad Blanchard, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:00 p.m., Wednesday, September 28, 2022.

Public Hearing

A public hearing will be held on Thursday, September 29, 2022 at 10 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kevin J. Richard, CPA
Secretary, Department of Revenue

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Taxes Not Deductible; Net Operating Loss Deduction; Application of Net Operating Losses Carryover to Otherwise Closed Years

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments to LAC 61:I.1122; 1124, and 1125 remove various administrative provisions made obsolete by Act 103 of the 2015 Regular Session, which repealed the carryback provisions as it relates to net operating losses (“NOL”) for corporations.

No impacts on costs borne by state or local governmental units are anticipated due to this proposed rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No material impacts on revenue collections of state or local governmental units are anticipated due to this proposed rule change. This proposal is repealing rules that are no longer relevant due to change in statute.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NON-GOVERNMENTAL GROUPS (Summary)

No material impacts on costs or economic benefits are anticipated for affected personal, small business or non-governmental groups due to this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change.

Kevin J. Richard, CPA
Secretary of Revenue

Alan Boxberger
Interim Fiscal Officer

NOTICE OF INTENT

Department of Revenue Policy Services Division

Taxes Not Deductible; Net Operating Loss Deduction; Application of Net Operating Losses Carryover to Otherwise Closed Years (LAC: 61:I.1122, 1124, and 1125)

Under the authority of R.S. 47:1511 and 287.86 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1122 and to repeal 1124 and 1125.

The primary purpose of the proposed regulation is to implement Act 103 of the 2015 Regular Session of the Louisiana Legislature, which repeals the carryback provisions as it relates to net operating losses for corporations.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of the Department of Revenue

Chapter 11. Corporation Income Tax

§1122. Taxes Not Deductible

A.-B. ...

~~C. Net Operating Loss Carryback. Federal income tax deducted from Louisiana net income in taxable periods to which a net operating loss is carried back shall be computed to determine the amount of federal income tax attributable to net income which is taxed by the federal but which is not taxed by Louisiana as a result of a net operating loss carryback. Federal income tax attributable to net income which is not taxed by Louisiana as a result of a net operating loss carryback is the excess of allowable federal income tax deducted from Louisiana net income before the net operating loss carryback over the allowable deduction after the net operating loss carryback. The federal income tax attributable to net income which is not taxed by Louisiana shall be treated as a reduction to the net operating loss deduction. If the amount of the federal income tax attributable to the net income which is not taxed by Louisiana exceeds the Louisiana net operating loss deduction, such excess shall be treated as income in the year of the transaction that gave rise to the excess. These principles are illustrated in the following examples.~~

D. Examples

Example 1

The ABC Corporation does not include its net income in a consolidated federal income return as provided by Section 1501 of the Internal Revenue Code. ABC files state and federal income tax returns on a calendar year basis. ABC Corporation's net income and other financial information used to file state and federal income tax returns for the four-year period ending December 31, 1987, include the following:

Taxable Periods	1984	1985	1986	1987
Federal net income or (loss)	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 600,000
Louisiana net income or (loss)	1,200,000	1,800,000	3,000,000	(1,000,000)
Federal income tax	800,000	1,600,000	2,000,000	240,000
Federal income tax deducted from Louisiana net income	467,280	706,240	1,171,200	0-
State income tax deducted from federal net income but not Louisiana net income	57,500	86,000	144,000	0-
Income tax apportionment ratio	55%	40%	50%	50%
Louisiana taxable income	732,720	1,093,760	1,828,800	0-

ABC Corporation elects to carry their 1987 Louisiana net operating loss back to 1984 pursuant to R.S. 47:287.86. Federal income tax attributable to net income which is not taxed by Louisiana as a result of the net operating loss carryback is computed as follows:

1. Louisiana net income, 1984	\$1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500
Multiplied by the income tax apportionment ratio	55%
Balance	\$31,625
Louisiana net operating loss, 1987	\$1,000,000
Adjustment	\$1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)	\$168,375
4. Federal net income, 1984	\$2,000,000
5. Ratio (line 3 divided by line 4)	8.4188%
6. Federal income tax, 1984	\$ 800,000
7. Allowable federal income tax deduction after the Louisiana net operating loss carryback (line 6 multiplied by line 5)	\$67,350
8. Federal income tax deducted from Louisiana net income before the net operating loss carryback	\$467,280
9. Federal income tax attributable to net income which is not taxed by Louisiana (line 8 minus line 7)	\$ 399,930
10. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana	\$1,000,000
11. Federal income tax attributable to net income which is not taxed by Louisiana (from line 9)	\$399,930
12. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 11)	\$600,070

Example 2

Assume the same facts in Example 1 except that the ABC Corporation sustained a \$2,000,000 federal net operating loss in 1987 and elects to carry the federal loss back to 1984. Federal income tax after the net operating loss carryback is zero.

1. Louisiana net income, 1984		\$1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$1,000,000	
Adjustment		\$1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$168,375
4. Federal net income, 1984		\$2,000,000
5. Federal net operating loss carryback from 1987		(\$2,000,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		0
7. Ratio (line 3 divided by line 6)		0
8. Federal income tax after the federal net operating loss carryback		0
9. Allowable federal income tax deduction after the net operating loss carryback (line 8 multiplied by line 7)		0
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 9)		\$467,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$1,000,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$467,280
14. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		\$532,720

Example 3

Assume the same facts in Examples 1 and 2 except that the Louisiana and federal net operating losses in 1987 are \$350,000 and \$1,800,000 respectively. Federal income tax after the net operating loss carryback is \$80,000.

1. Louisiana net income, 1984		\$1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$350,000	
Adjustment		\$381,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$818,375
4. Federal net income, 1984		\$2,000,000
5. Federal net operating loss carryback from 1987		(\$1,800,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		\$200,000
7. Ratio (line 3 divided by line 6)		100%
8. Federal income tax after the federal net operating loss carryback		\$80,000
9. Allowable federal income tax deduction after the net operating loss carryback (line 8 times line 7)		\$80,000
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana, 1984 (line 10 minus line 9)		\$387,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$350,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$387,280
14. Louisiana net operating loss after deduction for the amount of federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		0
15. Additional Louisiana taxable income for 1987 due to excess of federal income tax attributable to net income which is not taxed by Louisiana over the Louisiana net operating loss (line 13 minus line 12)		\$37,280

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83, R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:470 (March 2004), amended by the Department of Revenue, Policy Services Division, LR 33:295 (February 2007), amended by the Department of Revenue, Policy Services Division, LR 48:

§1124. Net Operating Loss Deduction

A. Election to Relinquish Carryback of a Net Operating Loss. The election to relinquish carryback is made by filing a return carrying the net operating loss to the earliest of the taxable years allowed for carryovers.

B. Changes to Election

1. Except as otherwise provided herein, a taxpayer may change the election to relinquish carryback of a net operating loss or the decision to carryback a net operating loss provided any additional tax and interest due as a result of the change is paid and any refund due as a result of the change has not prescribed.

2. The change in the election is made by filing an amended return for each tax year affected, paying any tax and interest due and showing any refunds due.

C. When a change in election is made during an audit or examination, the taxpayer shall submit to the auditor a written notification of the change in election and provide any additional information the auditor may require

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.86, R.S. 47:287.785 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:2494 (November 2004), repealed LR 48:

§1125. Application of Net Operating Losses Carryover to Otherwise Closed Years

A. The Louisiana Department of Revenue will follow the position of the Internal Revenue Service set out in Revenue Ruling 81-88 when determining whether a net operating loss (NOL) carryback should be applied against the income claimed on the taxpayer's return or the income that should have been reported.

~~B. In determining the amount of an overpayment of income tax from an NOL carryback that may be refunded or credited:~~

~~1. the taxable income of the carryback year for which the prescriptive period has otherwise run should not be reduced by the amount of an unclaimed deduction or by the amount of an item of income reported in error;~~

~~2. however, an adjustment should be taken into account if it would increase the income in the year to which the net operating loss is carried back and the increase in income should be applied as a setoff against the net operating loss carryback.~~

~~C. Examples~~

~~1. A calendar year 100 percent Louisiana corporate taxpayer has an NOL of \$165,000 for Year 3. Its taxable income before the federal income tax (FIT) deduction for each of its two earlier years is as follows: Year 2 \$150,000 and Year 1 \$100,000. On April 1, Year 6, taxpayer files a claim for refund for Year 1 (its first year of operation) and Year 2 due to the Year 3 NOL carryback. In September, Year 6, a LDR audit of Year 1 through Year 4 shows that taxpayer failed to claim a \$20,000 deduction in Year 1. The prescriptive period for filing a refund claim for this unclaimed deduction expired on December 31, Year 5. Year 1 income (as originally reported) of \$100,000 is not reduced by the unclaimed deduction for purposes of computing Year 1's pre-modification taxable income, and the unclaimed deduction isn't taken into account in determining the Year 3 NOL to be carried to Year 2. Thus the taxpayer is entitled to a full refund or credit of all its Year 1 tax paid on the Year 1 reported income of \$100,000, and the Year 3 NOL carried to Year 2 is \$65,000 (i.e. Year 3 NOL of \$165,000 less Year 1 reported income of \$100,000).~~

~~2. A calendar year 100 percent Louisiana corporate taxpayer has an NOL of \$165,000 for Year 3. Its taxable income before the FIT deduction for each of its two earlier years is as follows: Year 2 \$150,000 and Year 1 \$100,000. On April 1, Year 6, taxpayer files a claim for refund for Year 1 (its first year of operation) and Year 2 due to the Year 3 NOL carryback. In September, Year 6, an LDR audit of Year 1 through Year 4 shows that taxpayer failed to report \$20,000 of income in Year 1. Year 1 income (as originally reported) of \$100,000 is increased by the unreported income for purposes of computing Year 1's pre-modification taxable income, and the unreported income is taken into account in determining the Year 3 NOL to be carried to Year 2. Thus the taxpayer is entitled to a full refund or credit of all its Year 1 tax paid on the Year 1 actual income of \$120,000, and the Year 3 NOL carried to Year 2 is \$45,000 (i.e. Year 3 NOL of \$165,000 less Year 1 actual income of \$120,000).~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.86 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:2290 (October 2010), repealed LR 48:

Family Impact Statement

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1. The stability of the family.
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5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

Poverty Statement

These proposed amendments and proposed repeal will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed amendments and proposed repeal will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
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Small Business Statement

It is anticipated that the proposed amendments and proposed repeal should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting these proposed amendments to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

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FOR ADMINISTRATIVE RULES**

RULE TITLE: Taxes Not Deductible; Net Operating Loss Deduction; Application of Net Operating Losses Carryover to Otherwise Closed Years

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

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No impacts on costs borne by state or local governmental units are anticipated due to this proposed rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No material impacts on revenue collections of state or local governmental units are anticipated due to this proposed rule change. This proposal is repealing rules that are no longer relevant due to change in statute.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NON-GOVERNMENTAL GROUPS (Summary)

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IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change.

Kevin J. Richard, CPA
Secretary of Revenue

Alan Boxberger
Interim Fiscal Officer

**Fiscal and Economic Impact Statement
For Administrative Rules**

Person preparing statement:	<u>Michelle Galland</u>	Department:	<u>Revenue</u>
Phone:	<u>(225) 219-2180</u>	Office:	<u>Policy Services Division</u>
Return Address:	<u>617 North Third Street</u>	Rule Title:	<u>61:I.1122; 1124, and 1125</u>
	<u>Baton Rouge, LA 70802</u>	Date Rule Takes Effect:	<u>November 20, 2022</u>

Summary

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments to LAC 61:I.1122; 1124, and 1125 remove various administrative provisions made obsolete by Act 103 of the 2015 Regular Session, which repealed the carryback provisions as it relates to net operating losses ("NOL") for corporations.

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Signature of Agency Head or Designee
Kevin J. Richard, Secretary
Typed Name and Title of Agency Head or Designee

Date of Signature



Legislative Fiscal Officer Designee
Alan Boxberger, Interim Fiscal Officer
Typed Name of Legislative Fiscal Officer Designee
8/9/22

Date of Signature