

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SUBJECT

LOUISIANA ENACTS SEVERAL LAWS THAT LIMIT THE USE OF NET OPERATING LOSSES AND REDUCE TAX DEDUCTIONS, SUBTRACTIONS, AND CREDITS

SUMMARY

In June 2015, Louisiana Governor Bobby Jindal (R) signed into law several bills that, together, modify the state's corporation income tax net operating loss ("NOL") provisions, and reduce certain deductions/subtractions from gross income, expense deductions and credits that a taxpayer subject to corporation income tax may claim. It also imposes stricter limitations on the availability of the individual income resident credit for taxes paid to other states. Lastly, the new law significantly changes certain aspects of the penalty provisions.

DETAILS

Changes to Corporation Income Tax NOL Carryovers (Act 103/H.B. 218, June 19, 2015)

The new law modifies the use of NOL carryovers in the following ways:

- ▶ Extends the carryforward period for net operating losses to twenty (20) years from fifteen (15) years;
- ▶ Eliminates the three (3) year carryback period; and
- ▶ Reduces the NOL utilization by 28% of the total NOL carryover amount available for use in the current year.¹

¹ The amount of NOL deduction that may be taken by other taxpayers (e.g., partnerships and nonresident individuals) was reduced by 28% as well. However, it appears the reduction for these taxpayers applies to taxable years beginning after December 31, 2014.

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These changes to the NOL carry forward and carry back provisions apply to an NOL deduction claimed on an original return filed after June 30, 2015. The change does not apply to an amended return filed on or after July 1, 2015, relating to a NOL deduction properly claimed on an original return filed prior to July 1, 2015.

Reductions to Other Corporation Income Tax Deductions and Subtractions (Act 123/H.B. 624, June 19, 2015)

The new law also reduces the following deductions/subtractions from gross income by 28%:

- ▶ Refunds of Louisiana corporation income taxes paid;
- ▶ Amounts received as dividend income from a banking corporation organized under the laws of Louisiana, a national banking corporation doing business in Louisiana, and a capital stock association whose stock is subject to ad valorem taxation;
- ▶ Hurricane recovery benefits;
- ▶ Dividends received; and
- ▶ A deduction for expenses disallowed under Section 280(C) of the Internal Revenue Code.

In addition, the new law reduces the allowance for depletion on oil and gas wells to 15.8% (previously 22%) of the gross income from the property during the taxable year, excluding from gross income 72% (previously 100%) of rents and royalties paid/incurred with respect to the property. The depletion deduction may not exceed 36% (previously 50%) of the net income from the property of the taxpayer.

These changes to the law generally apply to an original return filed after June 30, 2015 but before July 1, 2018. If the taxpayer filed a valid extension prior to July 1, 2015, one-third of any portion of a deduction/subtraction disallowed as a result of these law changes may be deducted on the taxpayer's return for each of the taxable years beginning in 2017, 2018, and 2019.

Penalties and Waivers (Act 128/H.B. 721, June 19, 2015)

Effective July 1, 2015, the new law makes the late payment penalty discretionary and removes the estimated tax safe harbor, thus, allowing assessment of late payment penalties even if 90% of the total tax due on the return is paid by the non-extended due date for the return.

Also effective July 1, 2015, the new law modifies the negligence penalty as follows:

- ▶ Makes it discretionary;
- ▶ Increases it to 10% (previously 5%) of the tax deficiency; and
- ▶ Imposes a new 15% substantial underpayment penalty (20% in the case of willful attempt to disregard the tax).

Lastly, effective January 1, 2016, the new law removes the requirement that waiver of all penalties for individuals, and late payment and filing penalties for other taxpayers, in excess of \$25,000 be approved by the Board of Tax Appeals, but subjects such waivers to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Tax Credits, Exemptions, and Rebates (Multiple Acts/Bills)

Act 125/H.B. 629, June 19, 2015, reduces many corporation income and franchise tax credits and exemptions by 28%. With respect to these reductions, similar to other changes in the law: (i) most apply to an original return filed after June 30, 2015, and before June 30, 2018; and (ii) if the taxpayer filed a valid extension prior to July 1, 2015, one-third of any portion of a credit, exemption or rebate disallowed as a result of these law changes may be claimed on the taxpayer's return for each of the taxable years beginning in 2017, 2018, and 2019. (See the chart at the end of this alert.)

In addition, Act 357/H.B. 749, June 29, 2015 requires the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs to review the economic benefit of several credits and make recommendations by March 1, 2017, regarding whether to continue each credit. (See *the chart at the end of this alert.*)

In addition to the credit reductions and economic benefit review, the new law modifies certain credits, including the following:

- ▶ **Tax Credits for Local Inventory Taxes Paid, R.S. § 47:6006 (Act 133/H.B. 805, June 19, 2015).** Effective for a credit claimed on an original return filed after June 30, 2015, a credit in excess of the tax liability for the year is refundable if the amount paid to all political subdivisions in the taxable year was less than \$10,000. If the amount paid was \$10,000 or more, 75% of the excess credit is refundable and the remainder may be carried forward five (5) years.
- ▶ **Research and Development Tax Credit, R.S. § 47:6015 (Act 133/H.B. 805, June 19, 2015).** Effective for credits claimed on an original return filed after June 30, 2015, a credit in excess of the tax liability for the year is now non-refundable with allowance for a five (5) year carryover.
- ▶ **Angel Investor Credit, R.S. § 47:6020 (Act 104/H.B. 244, June 19, 2015).** The new law allows use of the Angel Investor Credit against the personal and corporate income tax and franchise tax through June 30, 2017 (previously July 1, 2017).
- ▶ **Enterprise Zone Credits and Rebates, R.S. § 51:1787 (Act 114/H.B. 466, June 19, 2015).** A retail business assigned a North American Industry Classification Code (or NAICS) of 44, 45 or 72 (which generally pertain to retailers, restaurants, and hotels), and whose contract was not entered into before July 1, 2015, may not receive benefits under this program. The law allows a limited exception for a taxpayer that filed an advance notification form for its project before June 10, 2015.
- ▶ **Credit Repeals (Act 357/H.B. 749, June 29, 2015).** Effective July 1, 2015, the employer tax credit for employee alcohol and substance abuse treatment programs (R.S. § 47:6010), the tax credit for certain overpayments (R.S. § 47:6028), the tax credit for conversion or acquisition of trailers which haul sugarcane (R.S. § 47:6029), and apprenticeship tax credits (R.S. § 47:6033) are repealed.

Personal Income Tax Credit for Taxes Paid to Other States (Act 109/H.B. 402, June 19, 2015)

The new law adds the following requirements in order to claim the credit for taxes paid to other states:

- ▶ The other state must have a similar credit;
- ▶ The credit is limited to the amount of Louisiana income tax that would have been imposed on the income that is taxed by the other state; and
- ▶ The credit is not allowed for income taxes paid to a state that allows a nonresident a credit for income taxes imposed by the state of residency.

The effective date of this change to the law is the same as the effective date of the reductions to the corporation income tax deductions and subtractions (See *above*).

New Income Tax Deduction for Employing Disabled Individuals (Act 117/H.B. 508, June 19, 2015)

Effective June 19, 2015, the new law creates a corporation and personal income tax deduction for an employer that provides continuous employment for certain individuals with intellectual, developmental, or service related disabilities within Louisiana for no less than an average of twenty (20) hours per week at a rate comparable to other employees performing the same task. The deduction is equal to 50% of the gross wages paid to the disabled employee for the first four (4) months of service and 30% for each subsequent month. The number of employees for which this deduction may be taken is capped at one hundred (100) qualifying employees for the entire program.

Suspended Sales and Use Tax Exemption for Business Utilities (H.C.R. 8, June 19, 2015)

Beginning July 1, 2015, and ending 60 days after the final adjournment of the 2016 Regular Session of the Legislature of Louisiana, House Concurrent Resolution 8 suspends the exemption from the 1% sales and use tax imposed on the sale or use of steam, water, electric power or energy, and natural gas.

BDO INSIGHTS

- ▶ While the reductions in subtractions, deductions and credits will likely have the effect of increasing the corporation income tax liability of many taxpayers, these taxpayers may take solace in the fact that many of these changes will only impact original returns filed during the three (3) year period July 1, 2015 through July 30, 2018. Those taxpayers that filed extensions before July 1, 2015, will at least be able to take a deduction, subtraction, and/or credit for one-third of an amount that was disallowed on the extended return when preparing a return to be filed in 2017, 2018, and 2019.
- ▶ All but one of these laws were enacted on June 19, 2015 (i.e., Act 357/H.B. 749 was enacted on June 29, 2015). Taxpayers should assess what, if any, impact these law changes would have on their existing deferred tax balances and adjust them accordingly as of the enactment date. These changes would be a Q2 event for calendar year end corporate taxpayers.
- ▶ Removal of the requirement that certain penalty waivers in excess of \$25,000 be reviewed by the Board of Tax Appeals may be one welcomed law change as this should streamline the process. However, removal of the 90% safe harbor related to estimated tax payments seems a bit harsh as this will put excessive pressure on taxpayers to accurately calculate estimated tax - and to even make overpayments - to avoid late penalties.

CREDITS SUBJECT TO 28% REDUCTION / JUNE 30, 2015 TO JUNE 30, 2018 EFFECTIVE PERIOD *(*Denotes different reduction amount or effective date)*

... New jobs tax credit (R.S. § 47:34 / (R.S. § 47:287.749)	... Purchase of qualified new recycling manufacturing or process equipment and/or service contracts (R.S. § 47:6005)
... Neighborhood assistance tax credit (R.S. § 47:35)	... Donations made to assist qualified playgrounds (R.S. § 47:6008)
... Contribution of tangible personal property of a sophisticated & technological nature to educational institutions (R.S. § 47:37 / R.S. § 47:287.755)	... Louisiana basic skills training tax credit (R.S. § 47:6009)
... Insurance company premium tax credit (R.S. § 47:227) *	... Donations of materials, equipment, or instructors made to certain training providers (R.S. § 47:6012)
... Credits arising from refunds by utilities (R.S. § 47:265 / R.S. § 47:287.664)	... Donations made to public schools (R.S. § 47:6013)
... Corporation tax credit; Re-entrant jobs credit (R.S. § 47:287.748)	... Credit for certain debt issuance costs (R.S. § 47:6017)
... Tax credit for employment of first-time nonviolent offenders (R.S. § 47:287.752)	... Tax credits for purchasers from "PIE contractors" (R.S. § 47:6018)
... Neighborhood assistance tax credit (R.S. § 47:287.753)	... Angel investor tax credit program (R.S. § 47:6020)

**CREDITS SUBJECT TO 28% REDUCTION /
JUNE 30, 2015 TO JUNE 30, 2018 EFFECTIVE PERIOD**
*(*Denotes different reduction amount or effective date)*

... Bone marrow donor expenses (R.S. § 47:287.758 / R.S. § 47:297)	... Digital interactive media and software tax credit (R.S. § 47:6022) *
... Employee and dependent health insurance coverage credit (R.S. § 47:287.759)	... Sound recording investor tax credit (R.S. § 47:6023) *
... Certain disabilities (R.S. § 47:297)	... Credit for the Louisiana citizens property insurance corporation (R.S. § 47:6025)
... Credit for certain federal tax credits (R.S. § 47:297)	... Cane River heritage tax credit (R.S. § 47:6026)
... Gasoline & special fuels taxes for commercial fisherman (R.S. § 47:297)	... Milk producers tax credit (R.S. § 47:6032)
... Donations to public elementary or secondary schools (R.S. § 47:297)	... Musical and theatrical production income tax credit (R.S. § 47:6034) *
... Family Responsibility (R.S. § 47:297)	... Conversion of vehicles to alternative fuel usage (R.S. § 47:6035) *
... Environmental equipment (R.S. § 47:297)	... Ports of Louisiana tax credits (R.S. § 47:6036)
... Small town doctor/dentist (R.S. § 47:297)	... Tax credit for "green job industries" (R.S. § 47:6037)
... Educational expenses incurred for degree related to law enforcement (R.S. § 47:297)	... Urban revitalization tax incentive program (R.S. § 51:1807)
... Employment of certain first-time drug offenders (R.S. § 47:297)	... Modernization tax credit (R.S. § 51:2399.3) *
... Purchase of bulletproof vest (R.S. § 47:297)	... Louisiana community development financial institution act credit (R.S. § 51:3085)
... Long-term care insurance premiums credit (R.S. § 47:297) *	... Tax exemptions and credits (R.S. § 25:1226.4) *
... Living organ donation credit (R.S. § 47:297)	... Technology commercialization credit (R.S. § 51:2354) *
... Accessible and barrier-free constructed home credit (R.S. § 47:297)	... Louisiana quality jobs program (R.S. § 51:2455) *
... Rehabilitation of an owner occupied residential or mixed-use property (R.S. § 47:297.6) *	... Competitive projects payroll incentive program (R.S. § 51:3121) *
... Amounts paid by certain military service members and dependents for certain hunting and fishing licenses (R.S. § 47:297.9)	... Headquarters relocation (R.S. § 51:3114) *
... Employment of the previously unemployed (R.S. § 47:6004)	... Mega-project energy assistance (R.S. § 51:2367) *

CREDITS SUBJECT TO ECONOMIC BENEFIT REVIEW

... Employer credit (R.S. § 47:6004)	... Digital interactive media and software tax credit (R.S. § 47:6022)
... Qualified new recycling manufacturing or process equipment and/or service contracts (R.S. § 47:6005)	... Sound recording investor tax credit (R.S. § 47:6023)
... Tax credits for local inventory taxes paid (R.S. § 47:6006)	... Tax credit for Louisiana Citizens Property Insurance Corporation assessment (R.S. § 47:6025)
... Tax credits for taxes paid with respect to vessels in Outer Continental Shelf Lands Act Waters (R.S. § 47:6006.1)	... Cane River heritage tax credit (R.S. § 47:6026)
... Motion picture investor tax credit (R.S. § 47:6007)	... Solar energy systems tax credit (R.S. § 47:6030)
... Tax credits for donations made to assist playgrounds in economically depressed areas (R.S. § 47:6008)	... Tax credit for certain milk producers (R.S. § 47:6032)
... Louisiana Basic Skills Training Tax Credit (R.S. § 47:6009)	... Musical and theatrical production income tax credit (R.S. § 47:6034)
... Employer tax credits for donations of materials, equipment, advisors, or instructors (R.S. § 47:6012)	... Tax credit for conversion of vehicles to alternative fuel usage (R.S. § 47:6035)
... Tax credits for donations made to public schools (R.S. § 47:6013)	... Ports of Louisiana tax credits (R.S. § 47:6036)
... Credit for property taxes paid by certain telephone companies (R.S. § 47:6014)	... Tax credit for "green job industries" (R.S. § 47:6037)
... Research and development tax credit (R.S. § 47:6015)	... Child care expense tax credit (R.S. § 47:6104)
... Louisiana New Markets Jobs Act; Premium tax credit (R.S. § 47:6016.1)	... Child care provider tax credit (R.S. § 47:6105)
... Tax credits for certain expenses paid by economic development corporations (R.S. § 47:6017)	... Credit for child care directors and staff (R.S. § 47:6106)
... Tax credits for purchasers from "PIE contractors" (R.S. § 47:6018)	... Business-supported child care (R.S. § 47:6107)

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