NOTICE OF INTENT

Department of Revenue
Policy Services Division

Application of Net Operating Losses
Carryover to Otherwise Closed Years
(LAC 61:I.1125)

Under authority of R.S. 47:287.86 and 1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1125 to provide for the application of net operating losses to otherwise closed years.

Title 61
REVENUE AND TAXATION
Part I. Department of Revenue—Taxed Collected and Administered by the Secretary of Revenue
Chapter 11. Corporation Income Tax
§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% 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% 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, a 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:

Family Impact Statement

The proposed adoption of LAC 61:I.1125 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Vanessa LaFleur, Director, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be submitted no later than 4:30 p.m., Tuesday, August 24, 2010.

Public Hearing

A public hearing will be held on Wednesday, August 25, 2010, at 10:00 a.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Application of Net Operating Losses Carryover to Otherwise Closed Years

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

This proposed rule will have no cost or savings impact to state or local governments. Any incidental costs will be absorbed in the Department of Revenue's existing budget.

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

This proposed rule will only impact when an unclaimed refund has prescribed and a net operating loss is carried back to the period in which the refund would have been claimed. The effect of this rule on state general fund revenue is indeterminable, and is expected to be a minimal decrease in income tax collections. This situation is not common or typical and this rule will serve to clarify and provide consistency to the way the Department calculates tax liabilities or refunds.

This proposed rule will have no impact on local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule will only benefit a few taxpayers in rare situations. The extent of the economic benefit is indeterminable, and is expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule is not expected to have any effect on competition and employment

Cynthia Bridges	Robert E. Hosse
Secretary	Staff Director
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