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

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:785 (April 2018).

§1122. Taxes Not Deductible

A. General. R.S. 47:287.83 provides that federal income tax levied on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid, is not deductible.

B. Federal Alternative Minimum Tax. Federal alternative minimum tax attributable to tax preference items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and development cost is not deductible. Federal alternative minimum taxable net income from sources other than tax preference items is deductible to the extent that it is applicable to regular federal taxable income.

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. Definitions. For the purposes of this Section, alternative minimum tax, regular federal income tax, alternative tax on capital gains, and regular tax on ordinary net income are defined as provided in §1123.F.

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).

§1123. Federal Income Tax Deduction

A. General. R.S. 47:287.85(C) permits corporations to claim as a deduction in computing net income that portion of the federal income tax levied with respect to the Louisiana net income, which is applicable to the year for which the Louisiana return is filed, regardless of the method of accounting utilized (cash, accrual, etc.). For determination of the deductible amount of federal alternative minimum tax attributable to Louisiana net income, refer to §1122. When a corporation includes its net income in a consolidated federal income tax return, total federal income tax for the purpose of this Section shall be the amount determined pursuant to §1123.E.

B. Computations. The deductible portion of the federal income tax, the tax attributable to Louisiana income, is the sum of the amounts determined in §1123.B.1 and 2.

1. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates is the result obtained by multiplying the federal income tax which is calculated at alternative capital gain rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates

Noncompensating Item—any item of difference between federal and Louisiana income or deductions for a particular year other than a compensating item.

Regular Federal Income Tax—the sum of the tax defined in *regular tax on ordinary net income* and *alternative tax on capital gains*.

Regular Tax on Ordinary Net Income—the federal net tax liability imposed on net income after net income is reduced by the amount of net capital gain subject to alternative tax rates, less credits.

Taken into Consideration Fully in Determining the Allowable Federal Income Tax Deduction for Louisiana Income Tax Purposes for Prior Years—as used in this Section means fully used in reducing the amount of the federal income tax deduction for such prior years. The purpose of this provision is to allow an adjustment for an item which will increase the federal income tax deduction only to the extent that adjustments applicable to the item in prior years were used to decrease the federal income tax deduction. Similarly, the term *to be fully taken into consideration in determining the allowable federal income tax deduction in ... future years for Louisiana income tax purposes* means to be used fully in reducing the amount of the federal income tax deduction for such future years.

G. Special Rules

1. The computations prescribed in §1123.B are subject to the rules provided in R.S. 47:287.442. That is, the computations cannot have the effect of attributing refunds of federal income tax which arose on account of conditions or transactions occurring after the close of the taxable year, to any year other than that in which arose the transactions or conditions giving rise to the refund. Accordingly, appropriate changes shall be made when necessary to attribute the refund to the proper year.

2. Notwithstanding the definition provided in §1123.F *noncompensating item* and *compensating item*, deductions which are declared as allowable in the computation of Louisiana net income pursuant to R.S. 47:287.73(C)4 shall be treated as a compensating item of deduction for the purpose of computing the amount of federal income tax deduction under §1123.C.

3. The federal income tax deduction determined under §1123 must take into account R.S. 47:287.83 which provides in part that no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid.

4. If the tax of any member computed on a separate return basis under §1123.E.1, 2, and 3 is less than zero, then for the purposes of §1123.E, such member's separate return tax shall be zero.

5. The secretary may adjust the consolidated federal income tax allocation formula prescribed in §1123.E when in his opinion such action is necessary to obtain a reasonable allocation and to clearly reflect Louisiana taxable income.

6. The sum of the net consolidated federal income tax attributed to all members of the consolidated group for the taxable period cannot exceed the amount of consolidated federal income tax paid to the U.S. government for the taxable period.

7. When the alternative tax rate on net capital gains is the same as the regular tax rate on ordinary net income reduced by net capital gains, consolidated regular tax on ordinary net income and alternative tax on capital gains, after credits, may be combined and then attributed to each member of the consolidated group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47.287.85.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:98 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:473 (March 2004).

§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).

§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).

§1130. Computation of Net Allocable Income from Louisiana Sources

A. Allocation of Items of Income and Loss. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the state or states within which such items of income are earned or derived. The statute attributes every item of gross allocable income to a location and does not allow for any unallocated items of income. The principles embodied in the statute and this regulation are that items of allocable income from the use of tangible assets are allocated to the location of the tangible asset at the time of the use; income from the use of intangible assets is allocated to the business situs of the intangible asset, or in the absence of a business situs, to the commercial domicile of the corporation; and items of allocable income from services are allocated to the location at which the service was performed.

1. Rents and Royalties from Immovable or Corporeal Movable Property

a. Rents and royalties from immovable or corporeal movable property shall be allocated to the state where such property is located at the time the income is derived.

b. Rents or royalties from incorporeal immovables, such as mineral interests, are allocated to the state in which the property subject to the interest is located.

2. Interest from Controlled Corporation

a. Under the provisions of R.S 47:287.738(F)(2), a corporation may elect to pay tax on interest income from a corporation that is controlled by the former through direct ownership of 50 percent or more of the voting stock of the latter.

b. The election is made for each taxable period by employing the method on the return or amended return.

c. If the election is made, interest from securities and credits that is received by the electing corporation from another corporation controlled by the former through the direct ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, as follows.

i. Real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income that it produces.

ii. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average value of such property at the beginning and close of the taxable period, determined on a comparable basis. If the average value does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

iii. Value of Property to Be Used

(a). For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will choose which valuation method to use on the first return filed following the effective date of this regulation on which a R.S. 47:287.738(F)(2) election is made by employing the chosen valuation method on the tax return. Once a valuation method is chosen, this valuation method must be used on all future