RULE

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, adopts 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 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 36:0000 (October 2010).

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Secretary

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