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Louisiana Department of Revenue Is Incorrectly Interpreting and Applying the 28% NOL Reduction in HB 624 (Act 123)

As we reported in prior e*bulletins, the Louisiana Legislature passed several revenue raising bills this year in an attempt to address an apparent \$1.6 billion budget hole for the 2016 fiscal year. One of those new bills, [HB 624 \(now Act 123\)](#), [provides a 28% reduction to certain corporate income tax exclusions and deductions, including the net operating losses \(NOL\) deduction.](#)

With regard to the NOL deduction, HB 624 simply added four words to the applicable statute in [La. R.S. 47:287.86](#), as follows:

§287.86. Net operating loss deduction

A. Deduction from Louisiana net income. Except as otherwise provided, there shall be allowed for the taxable year an adjustment reducing Louisiana net income in an amount equal to seventy-two percent of the aggregate of:

* * *

One question that lingered, however, following the passage of HB 624 was exactly how the Louisiana Department of Revenue planned to interpret and apply this 28% reduction to a taxpayer's NOL deduction. In its communications to interested tax practitioners and members of the business community, the Department appeared to be waffling.

At one point, the Department seemed to properly interpret HB 624 so as to disallow a taxpayer's ability to apply 28% of its **total available NOL carryforward amount** in a particular tax year. Thus, under this interpretation, there would still be a possibility that a taxpayer's NOLs could fully offset all the taxpayer's gains for the year if, after the 28% "haircut," the taxpayer still had enough NOLs from which to draw.

However, the Department also alluded at one point that it might interpret HB 624 to mean that a taxpayer's NOL deduction in a particular tax year would be limited to **72% of the taxpayer's Louisiana net income**. Such an interpretation by the Department would seem to guarantee that at least 28% of a taxpayer's net income would be

subject to Louisiana income tax (and would thereby result in revenue to the State), but for some other available deduction, credit, or exemption.

Well... the Department has now provided its opinion. And it looks like the incorrect one.

The Department has now published on its website [a new worksheet, Form R-620GIW \(7/15\), which is to be used by taxpayers to calculate the 28% reductions required by HB 624.](#)

The “magic” appears to be in the mechanics of that form. At the very bottom of the worksheet, the line (and related instructions) regarding NOLs seems to **require** that the taxpayer limit its NOL deduction to **72% of the Louisiana net income on the taxpayer’s CIFT return (Line 1A of Form CIFT-620)**, rather than 72% of the total available NOL carry forward amount. Specifically, the worksheet provides:

Description	Column 1. Amount prior to Act 123 Reduction	Allowable Portion	Column 2. Amount allowed under Act 123
Form CIFT-620, Line 1C Reduction. In Column 1, enter the amount of NOL that would be utilized to reduce LA net income. This amount cannot be greater than Line 1A of Form CIFT-620. Multiply Column 1 by percentage allowed and enter the result in Column 2 and on Form CIFT-620, Line 1C.			
R.S. 47:287.86 Net operating loss		72%	

This clearly presents a problem for companies as to how they report those NOLs within the confines of the Department’s published form. We recommend taxpayers consult their tax practitioners for advice on how to address this particular issue.

--[Matt Mantle](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, you may also contact:

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