# Louisiana legislature passes several corporate income tax bills, taxpayer action by June 30, 2015, should be considered to secure certain benefits

*June 19, 2015*

**UPDATE:** On March 4, 2016, Louisiana enacted H.B. 7, which restores to 100% the exclusion from gross income for amounts received as dividend income from banking corporations. The change is effective for tax years beginning on or after January 1, 2015.

**UPDATE:** On June 19, 2015, Louisiana Governor Jindal signed all of the bills summarized in this Insight, except for H.B. 664, which he signed on July 1, 2015.

## In brief

On June 12 and June 15, 2015, the Louisiana State Legislature delivered a series of enrolled bills to the governor for his signature. If enacted, the bills would make several changes to Louisiana's corporate income/franchise tax laws, including (1) reducing temporarily certain deductions, exclusions, and credits; (2) increasing the NOL carryforward from 15 to 20 years and eliminating the NOL carryback; (3) converting the refundable R&D credit to a carryover credit; (4) converting the refundable credit for certain local property taxes paid into a partially refundable credit; (5) rendering certain retailers ineligible for EZ benefits; and (6) reducing temporarily certain quality jobs program benefits.

If enacted, many of the above changes would be applicable on July 1, 2015, regardless of a taxpayer's taxable year. Accordingly, taxpayers should consider whether to take action prior to July 1, 2015, to secure certain benefits should these bills become law.

## In detail

### *Temporary 28% reduction of certain deductions, exclusions, and credits from July 1, 2015, to June 30, 2018*

#### *Impacted deductions and exclusions*

If enacted, effective from July 1, 2015, through June 30, 2018, H.B. 624 would provide that the following deductions and exclusions from taxable income are limited:

- **Net operating loss.** The net operating loss deduction is limited to 72% of the otherwise calculated deduction.
- **Dividend income.** The dividend income exclusion is limited to 72% of the amount of dividends otherwise included in gross income.
- **Banking dividend income.** The deduction for dividend income from certain banking corporations

and certain capital stock associations is limited to 72%.

- **IRC § 280C expenses.** The deduction for expenses disallowed by IRC § 280C is 72% of expenses otherwise deductible under federal law but for the disallowance provisions of IRC § 280C.
- **Louisiana corporation income tax refunds.** The deduction for Louisiana corporation income tax refunds received during the taxable year is limited to 72%.
- **Depletion allowance.** The percentage depletion for oil and gas wells, coal and metal mines, and sulphur are impacted to varying degrees. More detail on oil and gas depletion is provided below.
- **Public transportation fund exclusion.** The exclusion for certain funds accrued by a corporation engaged in operating a public transportation system is limited to 72% of such funds.
- **Hurricane benefits.** The deduction for certain benefits provided to a taxpayer by a hurricane recovery entity is limited to 72% of such benefits.

### *Additional detail on the depletion allowance*

Of particular interest to the oil and gas industry, H.B. 624 reduces the allowable depletion deduction taken as a result of oil and gas production and exploration activities. Specifically, H.B. 624 would reduce the depletion allowance to 15.8% of 'gross income' from an oil and gas well during the tax year. H.B. 624 further excludes from 'gross income' 72% of any rents or royalties paid or incurred on the oil and gas well and provides that the depletion deduction may not exceed 36% percent of the net income of the taxpayer from the property, as calculated without depletion.

### *Impacted credits and incentives*

If enacted, effective from July 1, 2015, through June 30, 2018, H.B. 629 would provide that certain credits and incentives would be reduced by 28%. Major categories of impacted tax credits and incentives include, among others:

- new jobs tax credit
- green jobs credit
- citizens assessment credit
- education credit
- recycling credit
- live music and theater production incentives
- sound recording incentives
- brownfields incentives
- technology commercialization incentives.

### *Limitations/reductions effective July 1, 2015, regardless of taxable year*

If enacted, the limitations/reductions summarized above will apply to returns filed on or after July 1, 2015, irrespective of the taxable year to which the return relates. However, it appears that for certain taxpayers subject to Title 47, Part II (e.g., partnerships, non-resident individuals), the pending application of the NOL utilization limitation under Section 246 would not become effective until tax years beginning on or after January 1, 2015.

The limitations/reductions will not apply to amended returns filed on or after July 1, 2015, relating to exclusions, deductions, or credits "properly claimed on an original return filed prior to July 1, 2015."

### *Recovery of disallowed deductions, exclusions, and credits when returns filed under extension*

If a taxpayer has a valid filing extension in place before July 1, 2015, and files a return after July 1, 2015, under such extension, "then any portion of an exclusion or deduction disallowed . . . shall be allowed in the amount of one-third of the disallowed portion of the exclusion or deduction on the taxpayer's return for each of the taxable years beginning during calendar years 2017, 2018, and 2019."

### ***NOL carryforward increased from 15 to 20 years, carryback eliminated***

Under current law, corporate income tax taxpayers may carry forward a Louisiana net operating loss to each of the fifteen taxable years following the taxable year of such loss. Additionally, corporate income tax taxpayers may elect to carry back net operating loss deductions to each of the three taxable years preceding the taxable year of the loss.

If enacted, H.B. 218 would increase the NOL carryover to twenty years and eliminate the NOL carry back election for all claims of the deduction on any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates. Changes under H.B. 218 will not apply to an amended return filed on or after July 1, 2015, relating to a net operating loss deduction properly claimed on an original return filed prior to July 1, 2015.

### ***Carryforward, rather than refund, of research and development credits***

Under current law, a taxpayer claiming a federal R&D credit under IRC § 41(a) is allowed a corporation income/franchise tax refundable credit relating to qualified expenditures in Louisiana.

If enacted, effective for returns filed on or after July 1, 2015, H.B. 805 provides that such credit is no longer refundable. If the credit exceeds a taxpayer's tax liability for the tax year, the excess credit may be carried forward for up to five years.

Changes under H.B. 805 will not apply to an amended return filed on or after July 1, 2015, "provided that these credits were properly claimed on an original return filed prior to July 1, 2015."

***Certain retailers and restaurants ineligible for EZ benefits***

Louisiana's enterprise zone program allows a business to enter into a contract with the Board of Commerce and Industry to receive income tax credits or sales and use tax rebates if the taxpayer satisfies certain job creation requirements. Current law limits eligibility for retail businesses with a North American Industry Classification (NAIC) code of 44 or 45 (Retail Trade) and more than 100 employees nationwide to grocery stores and pharmacies located in an enterprise zone.

Effective for contracts entered into on or after July 1, 2015, H.B. 635 provides that retail businesses with an NAIC code of 44, 45, or 722 (Food Services and Drinking Places) are ineligible for EZ program benefits. However, if the related advance notification form was filed before July 1, 2015, then benefits are available provided the related claim for benefits is filed on or after July 1, 2016.

***Temporary Quality Jobs Credit reductions***

Louisiana provides a Quality Jobs Program, which generally provides qualified taxpayers a rebate equal to a 'benefit rate' percentage of the gross payroll of certain new direct jobs for an agreed upon period of time.

If enacted, effective for projects for which an advance notification was filed on or after July 1, 2015, H.B. 635 would provide that the rebate is measured by the 'benefit rate' times **80%** of gross payroll of certain new direct jobs.

Similar reductions are proposed for Mega-Project Energy Assistance, Headquarters Relocation, and Competitive Projects Payroll.

The changes in H.B. 635 would be effective through June 30, 2018.

***Carry forward, rather than full refund, of certain credits for local property taxes paid***

Under current law, Louisiana provides a corporate income/franchise tax credit for local property taxes paid on: (1) inventory held by manufacturers, distributors, and retailers; and (2) natural gas held, used, or consumed in providing natural gas storage services or in operating natural gas storage facilities. To the extent the allowable credit exceeds a taxpayer's tax liability, the excess is 100% refundable to the taxpayer.

If enacted, effective for claims filed on or after July 1, 2015, H.B. 805 would provide that the excess credit may be refunded or carried forward as follows:

- **100% Refunded.** The excess credit is fully refundable if a taxpayer's total local property taxes were less than $10,000 in the taxable year.
- **75% refund, 25% carryforward.** If a taxpayer's total local property taxes were $10,000 or more in the taxable year, then 75% of the excess credit is refundable and 25% of the excess credit is carried forward for a period not to exceed five years.

Changes under H.B. 805 will not apply to an amended return filed on or after July 1, 2015, "provided that these credits were properly claimed on an original return filed prior to July 1, 2015."

A taxpayer's decision whether or not to act by June 30, 2015, may be impacted by the proposed revised definition of 'inventory.' H.B. 664, presented to the governor on June 11, 2015, would define 'inventory' for purposes of the local property tax credit. 'Inventory' would mean tangible personal property that (1) is held exclusively for sale in the ordinary course of business, (2) is currently in the process of production for subsequent sale, or (3) physically becomes a part of the production of goods. Although the definition would be applicable for tax years beginning on or after January 1, 2016, the definition may be instructive for a taxpayer's decision to act by June 30, 2015.

## *The takeaway*

With the applicable date of many of the summarized bills falling on July 1, 2015, regardless of a taxpayer's taxable year, many taxpayers will have to make quick decisions on whether to take certain actions by June 30, 2015, should the bills be enacted.

For example, the temporary reduction of certain deductions, exclusions, and credits presents complex issues for taxpayers. Using a calendar year taxpayer as an example, if a taxpayer with a current valid extension to file its corporate income/franchise tax return waits until after June 30, 2015, to file, it appears the taxpayer would have its impacted deductions, exclusions, and credits reduced for the 2014, 2015, and 2016 tax years. However, such reductions would be recovered in the taxpayer's 2017, 2018, and 2019 tax years.

Open questions for taxpayers include – is filing a return by June 30 to preserve 2014 attributes beneficial

when the alternative appears to be the ability to take the 'suspended' attributes in future years? If so, will a later 2014 tax year return filed by the extended due date (filed, for example, to ensure the state return matches a subsequently filed federal return) impact the result? Are there further complications for a fiscal year taxpayer? Moreover, are there special considerations for a taxpayer filing amended returns after June 30, 2015, in response to a federal RAR adjustment?

Taxpayers should also consider what effect, if any, the reduction of exempt dividend income will have on their interest expense allocation formula under Louisiana Administrative Code § 61:I.1130(B).

A taxpayer may have to contemplate other actions, such as accelerating the filing of certain applications, before July 1, 2015, in order to preserve certain credits and incentives.

Several provisions state that reductions/limitations will not apply to amended returns filed on or after July 1, 2015, but only when the impacted deduction, exclusion, or credit is "properly claimed on an original return filed prior to July 1, 2015." If a taxpayer files an amended return seeking a refund relating to an impacted deduction, exclusion, or credit, arguably such item could be viewed as not 'properly claimed' on the original return and therefore the reductions/limitations could apply under the amended return. Taxpayers should consider whether impacted refund claims should be filed prior to July 1, 2015.

## *Let's talk*

If you have any questions regarding the applicability of the Louisiana bills discussed in this Insight, please contact:

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