

New Louisiana laws reduce tax benefits and credits, and suspend exemptions

July 1, 2015

Overview

On June 18, 2015, we issued a Tax Alert¹ summarizing the following four tax bills, which, at the time, were awaiting Louisiana Governor Jindal's signature: House Bill 218 (HB 218), House Bill 624 (HB 624), House Bill 629 (HB 629), and House Bill 805 (HB 805). In our earlier Tax Alert we highlighted that the four bills contained significant income tax law changes,² reducing various tax benefits effective for tax returns filed on or after July 1, 2015. Accordingly, we had suggested that taxpayers seeking to potentially preserve these tax benefits may wish to consider filing applicable Louisiana tax returns prior to July 1.

On June 19, 2015, Governor Jindal signed the four bills, thereby enacting various modifications to Louisiana tax law, including:

- Eliminating three-year net operating loss (NOL) carryback
- Changing NOL carryforward from 15 to 20 years
- Reducing, for corporate taxpayers, dividend income exclusion by 28 percent (previously 100 percent excluded)
- Reducing allowable depletion from 22 percent to 15.8 percent; also reducing income limit from 50 percent to 36 percent
- Limiting NOL utilization to 72 percent of the aggregate NOL carryover amount
- Reducing the refundability of the Inventory Tax Credit
 - Providing a carryover for the non-refundable portion of the credit
- Converting the Research and Development Credit from a refundable credit to a non-refundable credit

On June 19, 2015, Governor Jindal also signed Senate Bill 271 (SB 271), which replaces the special fuel decal with a per-gallon tax on special fuels.

In addition to the various tax bills enacted in the month of June, on June 12, 2015, the Louisiana Legislature adopted House Concurrent Resolution 8 (HCR 8),³ which suspends certain sales and use tax exemptions applicable to sales of steam, water, electric power or energy, and natural gas. The suspension begins July 1, 2015, and ends 60 days after final adjournment of the 2016 Regular Session of the Louisiana Legislature.

In this Tax Alert we summarize these law changes.

NOL carryback/carryforward changes

HB 218⁴ repeals the three-year NOL carryback provisions (including the related refund and prescription periods), and increases the carryforward period from 15 years to 20 years.⁵ The law is effective beginning with any refund claim filed on or after July 1, 2015, regardless of the taxable year to which the underlying return relates. However,

¹ Our June 18, 2015, Tax Alert is available [here](#).

² Note that HB 805 also references the franchise tax.

³ Pursuant to La. Const. art. III, § 20, HCR 8 became final upon approval by both the House and the Senate. Unlike the tax bills summarized above, which were signed by Governor Jindal and thus enacted into law, HCR 8 did not require the governor's signature.

⁴ Act No. 103, 2015 Reg. Sess. (1st Reg. Sess.) HB 218 (Jun. 19, 2015). A copy of HB 218 is available [here](#).

⁵ *Id.* at Sec. 1.

the law will not apply to an amended return filed on or after July 1, 2015, relating to an NOL deduction properly claimed on an original return filed prior to July 1, 2015.⁶

Reduction of various tax benefits

HB 624⁷ reduces various income exclusions and tax deductions by 28 percent. The modifications include a reduction to the following income exclusions:

1. Dividend income for corporate taxpayers
2. Funds received by a corporation operating a public transportation system
3. Certain dividend income from Louisiana banks
4. Refunds of Louisiana income taxes paid
5. Certain hurricane recovery benefits

HB 624 also reduces certain deductions as follows:

1. Allowable depletion is reduced from 22 percent to 15.8 percent (income limit is reduced from 50 percent to 36 percent)
2. Expenses disallowed by IRC §280C, which were previously wholly deductible, are now only 72 percent deductible⁸

Furthermore, HB 624 reduces the amount of NOL that a taxpayer can use to offset current-year income. The NOL utilization cannot exceed 72 percent of the total NOL available for use.⁹

These law changes are effective for any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates;¹⁰ however, these changes will “sunset” on June 30, 2018, whereupon the law will revert to that applicable prior to HB 624.¹¹ Additionally, these law changes will not apply to an *amended return* filed on or after July 1, 2015, for any exclusion or claim for deduction properly claimed on an original return filed prior to July 1, 2015.¹² Also, if a return is filed after July 1, 2015—for which a valid filing extension has been allowed prior to July 1, 2015—then the disallowed portion of any exclusion or claim for deduction under the provisions of HB 624 will be allowed as an exclusion or claim for deduction in equal amounts for taxable years beginning during calendar years 2017, 2018, and 2019.¹³

Reduction of various tax credits

HB 629¹⁴ reduces various tax credits by 28 percent,¹⁵ effective for any return filed on or after July 1, 2015, regardless of the taxable year to which the return relates;¹⁶ however, these law changes “sunset” on June 30, 2018, whereupon the law will revert to that applicable prior to HB 629.¹⁷ Additionally, the law will not apply to an *amended return* filed on or after July 1, 2015, relating to credits properly claimed on an original return filed prior to July 1, 2015.¹⁸ Also, if a return is filed after July 1, 2015—for which a valid filing extension has been allowed prior to July 1, 2015—then any portion of the credit reduced by HB 629 will be allowed as a credit in equal amounts for taxable years beginning during calendar years 2017, 2018, and 2019.¹⁹

Changes to the Inventory Tax Credit and the Research and Development Credit

HB 805²⁰ changes the Inventory Tax Credit from a refundable credit to one in which 75 percent of excess credit amounts that exceed taxpayer liability will be refundable, and 25 percent of the excess credit amounts may be carried forward for up to five years. HB 805 also changes the Research and Development Tax Credit from a

⁶ *Id.* at Sec. 2.

⁷ Act No. 123, 2015 Reg. Sess. (1st Reg. Sess.) HB 624 (Jun. 19, 2015). A copy of HB 624 is available [here](#).

⁸ *Id.* Sec. 2.

⁹ *Id.*

¹⁰ *Id.* at Sec. 5(A).

¹¹ *Id.* at Sec. 6.

¹² *Id.* at Sec. 5(B).

¹³ *Id.* at Sec. 5(C).

¹⁴ Act No. 125, 2015 Reg. Sess. (1st Reg. Sess.) HB 629 (Jun. 19, 2015). A copy of HB 629 is available [here](#).

¹⁵ *Id.* at Sec. 2.

¹⁶ *Id.* at Sec. 7(A).

¹⁷ *Id.* at Sec. 8.

¹⁸ *Id.* at Sec. 7(B).

¹⁹ *Id.* at Sec. 7(C).

²⁰ Act No. 133, 2015 Reg. Sess. (1st Reg. Sess.) HB 805 (Jun. 19, 2015). A copy of HB 805 is available [here](#).

refundable credit to one in which credit amounts may be carried forward for up to five years.²¹ The law is effective beginning with any refund claim filed on or after July 1, 2015, regardless of the taxable year to which the return relates.²² However, the law change will not apply to an amended return filed on or after July 1, 2015, relating to a credit claimed on an original return filed prior to July 1, 2015.²³

Per-gallon tax on special fuels replaces special fuel decal

SB 271²⁴ eliminates the special fuel decal for vehicles that run on compressed natural gas (CNG), liquefied natural gas (LNG), and liquefied petroleum gas (LPG). Taxpayers may continue to use and apply for the special fuel decal in lieu of the per-gallon special fuel tax until December 31, 2015.²⁵ Beginning January 1, 2016, the state will instead impose a tax at a rate of \$0.16 per gallon on the sale or consumption of these fuels in Louisiana when used in the operation of motor vehicles licensed or required to be licensed.²⁶ CNG, LNG, and LPG will also be subject to a separate tax of \$0.04 per gallon, although the products will be exempt from the petroleum products inspection fee.²⁷ Any person who sells or delivers CNG, LNG, or LPG into the fuel supply tank of a motor vehicle will be required to maintain a license as a special fuel dealer, and must file monthly returns by the 20th day of each month.²⁸

Suspension of tax exemptions for business utilities

HCR 8²⁹ temporarily suspends the application of certain exemptions³⁰ from the 1.0 percent state sales and use tax³¹ imposed on sales of steam, water, electric power or energy, and natural gas.³² The suspension begins July 1, 2015, and remains in effect until 60 days after final adjournment of the 2016 Regular Session of the Legislature of Louisiana.

Other legislation

In addition to the law changes discussed above, various other tax laws that fall beyond the scope of this Tax Alert were enacted. Also, Governor Jindal vetoed House Bill 555,³³ which would have expanded the definition of the term “dealer” for sales and use tax purposes to include a company that uses a domiciled affiliate to conduct business in the state (generally referred to as affiliate nexus).

ASC 740 treatment

The Louisiana legislative record confirms that the income tax law changes discussed in this Tax Alert were enacted in June 2015. Accordingly, any impact of these law changes should be treated as a second-quarter event for financial statement purposes for calendar year taxpayers.

Contacts

If you have questions regarding the law changes discussed above or other Louisiana tax matters, please contact any of the following Deloitte Tax professionals.

Scott Steinbring
Partner
Deloitte Tax LLP, Houston
+1 713 982 3555

Michael Matthys
Manager
Deloitte Tax LLP, Houston
+1 713 982 3128

Jerry Lo
Senior Manager
Deloitte Tax LLP, Houston
+1 713 982 3255

²¹ *Id.* at Sec. 1.

²² *Id.* at Sec. 2(A).

²³ *Id.* at Sec. 2(B).

²⁴ Act No. 147, 2015 Reg. Sess. (1st Reg. Sess.) SB 271 (Jun. 19, 2015). A copy of SB 271 is available [here](#).

²⁵ *Id.* at Sec. 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 2015 Regular Session (1st Reg. Sess.) H. Con. Res. 8 (Jun. 12, 2015). A copy of HCR 8 is available [here](#).

³⁰ Note that HCR 8 specifically refers to the suspension of exemptions referenced in La. Rev. Stat. §47:305(D)(1)(b), (c), (d), and (g), and “any other exemptions provided in those portions of Chapter 2 of Subtitle II of Title 47 the Louisiana Revised Statutes of 1950 that provide for exemptions for business utilities for the taxes imposed therein.”

³¹ La. Rev. Stat. §47:331 imposes a 0.97 percent sales tax; La. Rev. Stat. §51:1286(A) imposes a 0.03 percent sales tax.

³² Pursuant to La. Const. art. III, § 20, HCR 8 became final upon approval by both the House and the Senate and does not require the governor’s signature.

³³ Governor Jindal’s veto letter is available [here](#).

Robert Topp

Director
Deloitte Tax LLP, Houston
+1 713 982 3185

Brad Brookner

Director
Deloitte Tax LLP, Houston
+1 713 982 4897

George Francis

Director
Deloitte Tax LLP, Dallas
+1 214 840 7179

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