

General Information Letter: Unless a timely election is made to carry losses forward only, an Illinois net loss incurred in a taxable year for which carrybacks are allowed must first be carried back.

January 4, 2010

Dear:

This is in response to your letter dated November 25, 2009. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

This letter and the attached documentation is in response to the enclosed notice and letters dated October 29, 2009 and corrected Schedules NLD relating to COMPANY, Inc. ("COMPANY"). As explained in the attached letters and corrected schedules NLD for the December 2006 and December 2007 reporting periods, the Illinois Department of Revenue has reduced Illinois net loss deductions previously claimed on COMPANY's tax returns for these periods to \$50,932 and \$0, respectively. Their explanation for these reductions is because losses are required to be carried to the first income filings and even though losses were not used by COMPANY on the 2003, 2004, and 2005 original return filings, they should have been and are therefore no longer available for use in subsequent years.

Based on a telephone conversation that I had with Ms. Z at the Illinois Department of Revenue today, she explained to me that I could request a statutory ruling from your office on the Department of Revenue's position for reducing the Illinois net loss deductions available for the 2006 and 2007 tax years.

As additional background, I have attached the following information to support the Illinois net loss deductions claimed by COMPANY on the 2006 and 2007 Illinois Corporation Income and Replacement Tax Returns (Forms IL-1120) for the calendar years ended 12/31/2006 and 12/31/2007:

1. A copy of the Taxpayer Statement, letters, and corrected Schedules NLD for COMPANY dated October 29, 2009 are attached for your reference. (5 pages).
2. A spreadsheet summarizing the Illinois base income / (Loss) for the December 31, 2001 through December 31, 2007 calendar years and related Illinois Net Operating Loss (NOL) deductions as previously reported on the Illinois Corporation Income and Replacement Tax Returns for COMPANY. (1 page).
3. Copies of the previously filed Forms IL-1120 for the calendar year ending 12/31/2001, 12/31/2003, 12/31/2004 and 12/31/2005 for COMPANY from our records. (11 pages). Because we do not have a copy of the previously filed Form IL-1120 for the calendar year ending 12/31/2002 in our records, we are relying on the Illinois Department of Revenue's corrected Illinois net loss amount of \$55,698, as shown on the enclosed corrected Schedules NLD provided under item 1 above.

4. As referenced in opening paragraph of this letter, the enclosed previously filed Forms IL-1120 for the 12/31/2003, 12/31/2004, and 12/31/2005 calendar years did not include Illinois net loss deductions and included income and replacement tax liabilities, which were presumably previously paid by COMPANY.

35 ILCS 5/207(a)(2) and IL Admin. Code 100.2330(b)(1) both provide that an Illinois net loss that is incurred in a tax year ending on or after December 31, 1999 and prior to December 31, 2003 may be carried back to the two preceding tax years or carried forward to the 20 succeeding tax years. Because the Illinois net losses in question were incurred in the 2001 and 2002 tax years, those provisions clearly apply to the Illinois net losses for COMPANY. Furthermore, because these statutory provisions do not specifically address the implications of Illinois net loss deductions not being carried to the next available tax year(s) by a taxpayer and because these provision do specifically allow for Illinois net losses for the tax years in question to be carried forward to the 20 succeeding tax years, the previously unused Illinois net losses from the 2001 and 2002 tax years were carried to the 2006 and 2007 tax years for COMPANY. As such, we respectfully request a ruling from the Legal Services Division on this matter, including any statutory references, case law citations, or other administrative rulings which may support the position taken by the Illinois Department of Revenue in the enclosed Taxpayer Statement and letters. If such a statute or ruling that addresses this specific fact patter does not exist, then we request that consideration be given to COMPANY's 2006 and 2007 tax return filing positions in light of the fact that the Illinois losses incurred by COMPANY in 2001 and 2002 and deducted on the 2006 and 2007 tax returns are within the allowable 20 year carryforward period and were not previously claimed as deductions by COMPANY.

RULING

Section 207 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/207) states in part:

(a) If after applying all of the (i) modifications provided for in paragraph (2) of Section 203(b), paragraph (2) of Section 203(c) and paragraph (2) of Section 203(d) and (ii) the allocation and apportionment provisions of Article 3 of this Act and subsection (c) of this Section, the taxpayer's net income results in a loss;

(1) ...

(2) for any taxable year ending on or after December 31, 1999 and prior to December 31, 2003, such loss shall be allowed as a carryback to each of the 2 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of such loss.

(a-5) Election to relinquish carryback and order of application of losses.

(A) For losses incurred in tax years ending prior to December 31, 2003, the taxpayer may elect to relinquish the entire carryback period with respect to such loss. Such election shall be made in the form and manner prescribed by the Department and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year in which

such loss is incurred, and such election, once made, shall be irrevocable.

(B) The entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.

Under this section, except to the extent provided in subsection (a-5)(A), a taxpayer may not elect the taxable years to which an Illinois net operating loss may be carried. In this case, unless COMPANY made the election under subsection (a-5)(A), the 2001 and 2002 Illinois net operating losses must each be carried back to the two taxable years preceding the loss year, and then carried forward to each of the 20 taxable years following the loss year. Under the ordering rule in subsection (a-5)(B), the amount of loss that may be carried to a taxable year is the excess of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the preceding taxable years to which such loss may be carried. The amount of Illinois net loss deduction allowable for each prior taxable year under this rule does not depend on whether or not the taxpayer actually filed a return in the prior taxable year claiming the deduction.

Accordingly, the amount of COMPANY's 2001 loss that may be carried to 2006 and 2007 is the excess of such loss over the sum of the deductions for carryback or carryover of such loss allowable for COMPANY's 1999, 2000, 2003, 2004, and 2005 taxable years, regardless of whether any of its 2001 loss was actually claimed as a deduction in these prior years. Similarly, the amount of COMPANY's 2002 loss that may be carried to 2006 and 2007 is the excess of such loss over the sum of the deductions for carryback or carryover of such loss allowable for COMPANY's 2000, 2003, 2004, and 2005 taxable years, regardless of whether any of its 2002 loss was actually claimed as a deduction in these prior years.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)