

IT 10-0002-GIL 01/04/2010 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter: No subtraction is allowed for depreciation on gain deferred under IRC Section 1031 on the exchange of property located outside Illinois.

January 4, 2010

Dear:

This is in response to your letter dated September 1, 2009, which was forwarded to me for response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which 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 found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

The above-named client has requested that I respond to the enclosed notice dated August 12, 2009. This notice states that you have disallowed the amount claimed as "Other Subtractions". The "other subtraction" claimed on the original return is additional depreciation due to a depreciable basis that is different for Illinois than for federal purposes. A detailed explanation of this difference was attached to the return and another copy is enclosed with this letter.

The explanation attached to the return states, in part:

During 2005, the partnership purchased Illinois rental real estate at a cost of \$1,895,745. For Federal tax purposes, this property is qualified as the replacement property in a Section 1031 like-kind exchange. Therefore, for Federal purposes, the basis of the property received in the exchange was reduced by the deferred gain, resulting in a basis of \$962,807. . . .

There is no deferred gain applicable to this exchange for Illinois purposes, because the property given up in the exchange was not located in Illinois. Therefore, for Illinois purposes, the basis of the property is the original cost of \$1,895,745.

Response

Under Section 203(d)(1) of the Illinois Income Tax Act (35 ILCS 5/203), the computation of a partnership's "net income" taxed by Illinois begins with the partnership's federal taxable income, as properly computed for the taxable year. Section 203(e)(2)(H) provides that, for a partnership, "federal taxable income" means "taxable income determined in accordance with Section 703 of the Internal Revenue Code, except that taxable income shall take into account those items which are required by Section 703(a)(1) to be separately stated but which would be taken into account by an individual in calculating his taxable income." Under Section 203(d)(2), various addition and subtraction modifications are then made, and the resulting "base income" is then allocated and apportioned to Illinois. Section 203(h) provides that no modification may be made to taxable income unless expressly provided in Section 203.

There is no provision in the Illinois Income Tax Act that modifies the federal income tax treatment of a like-kind exchange under Section 1031 of the Internal Revenue Code, or of the federal depreciation deductions allowed for property acquired through a Section 1031 exchange. Accordingly, the

IT 10-0002-GIL
January 4, 2010
Page 2

subtraction claimed on the return was properly disallowed under Section 203(h).

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax