

IT 10-0003-GIL 01/12/2010 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter: IITA Section 203(d)(2)(J) allows partnerships to subtract expenses whose deduction is disallowed under IRC Section 280C.

January 12, 2010

Dear:

This is in response to your letter dated December 7, 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 website at www.ILtax.com.

Your letter states as follows:

I would like to request a General Information Letter regarding IITA Section 203(d)(2)(J). This section deals with the deductibility of several federally disallowed deductions; one of which is federally disallowed wages relating to the Work Opportunity Tax Credit of Section 280C of the IRC.

I have spoken with several IDOR representatives in regards to this matter who have had opposing opinions. Upon review of the above code sections it seems clear that the Illinois Income Tax allows a partnership to include a subtraction on, in arriving at base income, equal to the amount of wages that were disallowed as a deduction on the federal return. The problem arises when considering where on the Schedule M this subtraction should appear. Conversely, perhaps this subtraction should be included on step 3, line 11 of form 1065.

The instructions for Schedule M (for businesses) give line specific instructions as follows: Lines 13a through 13e – Expenses of federally tax-exempt income and federal credits (Form IL-1120 and Form IL-1041 filers only)" the instructions go on to list the applicable IRC sections including 280C. The instructions for line 13 appear to suggest that business filers, other than a C-Corporation, cannot take a subtraction on Schedule M for an IRC 280C adjustment.

As you can see there seems to be a discrepancy between the regulations and the instructions. That said, I am requesting a GIL clarifying whether partnerships can take a subtraction equal to the amount of their IRC 280C wage expense disallowance. Additionally, if you deem the subtraction allowable, where should it appear.

RULING

Section 203(d)(2)(J) provides the following subtraction modification in the computation of base income of a partnership:

With the exception of any amounts subtracted under subparagraph (G), an amount equal to the sum of all amounts disallowed as deductions by (i) Sections 171(a)(2), and 265(2) of the Internal Revenue Code of 1954, as now or hereafter amended, and all amounts of expenses allocable to interest and disallowed as deductions by Section 265(1) of the Internal Revenue Code, as now or hereafter amended; and (ii) for taxable years ending on or after August 13, 1999, Sections 171(a)(2), 265, 280C, and 832(b)(5)(B)(i) of the Internal Revenue Code; the provisions of this subparagraph are exempt from the provisions of Section 250.

Accordingly, where IRC Section 280C applies in the case of a partnership to disallow deduction of certain wages or salaries paid or incurred, the partnership is allowed a subtraction modification equal to the amount of deduction disallowed.

You correctly point out that the instructions for the 2008 Illinois Schedule M indicate that a partnership is not allowed a subtraction for Section 280C expenses. The instructions are in error. A partnership is entitled to the subtraction modification for deductions disallowed under IRC Section 280C. On the 2008 Schedule M, the subtraction should be claimed on Line 13d. On the 2009 Schedule M, the subtraction should be claimed on Line 15d. Subsequent instructions will be corrected by deletion of the parenthetical "(Form IL-1120 and Form IL-1041 filers only)."

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)