

General Information Letter: Individuals take into account in computing their base income the net operating loss properly allowed in computing their federal adjusted gross income, and are not allowed any carryover not allowed on their federal returns.

March 8, 2011

Dear:

This is in response to your letter dated September 20, 2010, which has been forwarded to me for consideration and 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:

We are responding on behalf of our client, Mr. Z and Mrs. Z, to your notice of adjustment dated August 25, 2010. A copy of the notice is enclosed.

The notice is disallowing the losses stated on Schedule NR line 19. The taxpayers had incurred losses on their 2007 and 2008 returns in the amount of \$116,788 additionally they had a loss of \$14,199 stemming from COMPANY1, Inc. A copy of the fiscal years 2007, 2008 and 2009 Schedule K-1-P for COMPANY1, Inc., 2007 and 2008 Form NR, and 2009 IL-1040 have been included for your review.

Line 19, Column A, of the taxpayers' 2009 Schedule NR shows \$15,000 in total "other income" reported on line 21 of their federal return. Column B shows an amount of <\$130,987>, which is identified in an attached statement as comprised of <\$14,199> in "other loss from COMPANY1" and <\$116,788> in "net operating loss from prior years." The Schedule K-1-P issued to the taxpayers by COMPANY1 for its taxable year ending October 31, 2009, reports <\$48,840> in "other income and expense" in Column A of line 31, and apportions <\$14,199> of that amount to Illinois in Column B. An attached schedule shows that the <\$48,840> is for expenses deductible under IRC Section 179.

Schedule E of the taxpayers' Form 1040 federal income tax return for 2009 shows that the <\$48,840> in IRC Section 179 expenses passed through to the taxpayers from COMPANY1 were deducted in full on Line 17 of their Form 1040. Line 21 of the taxpayers' Form 1040 reports "other income" of \$15,000, which is identified on an attached schedule as "misc. other income subject to S.E. tax" from COMPANY2, Inc. No net operating loss deduction is shown on that line, nor is any deduction passed through from COMPANY1.

Response

Under Section 203 of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/203), the computation of a taxpayer's "net income" taxed by Illinois begins with the taxpayer's federal taxable income or, in the case of an individual, adjusted gross income, as properly computed for the taxable year. Various addition and subtraction modifications are then made, and the resulting "base income" is then allocated and apportioned to Illinois. Section 203(h) of the IITA provides that no modification may be made to taxable income or adjusted gross income unless expressly provided in Section 203 of the IITA. Section 203(g) of the IITA prohibits interpreting any modification to permit a double deduction unless the statute specifically provides otherwise.

Prior to 1986, the IITA made no provision for carryovers of losses. Instead, taxpayers entitled to claim a net operating loss deduction in computing their federal taxable income or adjusted gross income took that deduction into account automatically in computing their base income. Since 1986, however, taxpayers other than individuals have been required to add back net operating loss deductions taken into account in computing their federal taxable income under Section 203(b)(2)(D) (corporations) and 203(c)(2)(D) (trusts and estates). There is no similar provision in Section 203(a)(2), which provides the modifications required to be made by individuals to their adjusted gross income. Section 207 of the IITA allows taxpayers making modifications to federal taxable income under Section 203(b), (c) or (d) (partnerships) to carry over any negative amount of income allocated or apportioned to Illinois after making those adjustments. This provision does not apply to individuals whose modifications are made under Section 203(a).

Under these provisions, the taxpayers are not allowed to subtract the <\$48,840> in IRC Section 179 expenses that were passed through to them from COMPANY1. These expenses were deducted in full on Line 17 of their Form 1040, and no provision of Section 203 of the IITA permits a second deduction. Also, no subtraction is allowed for "net operating losses" incurred in prior years. Accordingly, the adjustments described in our notice dated August 25, 2010 are correct.

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