

General Information Letter: A donee's holding period of property acquired by gift includes the holding period of the donor prior to time the gift was made.

July 7, 2011

Dear:

This is in response to your letter dated June 9, 2011 in which you request information related to the Illinois income tax. 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:

We recently contacted the Illinois Department of Revenue through the toll-free help line with a question regarding gains from sales or exchanges of property acquired before August 1, 1969. The individual providing assistance and his supervisor had differing opinions about the treatment in our situation and suggested that we contact the Office of the General Council for guidance.

The instructions for Schedule F state that the amount of appreciation that is attributable to property acquired before August 1, 1969 is not subject to Illinois income tax when the property is sold. For properties whose fair market value was not readily ascertainable on August 1, 1969, the non-taxable portion of the gain which is attributable to appreciation before August 1, 1969 is calculated by multiplying the federally calculated gain by a fraction, whose numerator is the number of months you held the property before August 1, 1969 and whose denominator is the total number of months you held the property.

The taxpayer in question was an Illinois resident in 2009 and sold property (farmland in Illinois) which was "gifted" to her by her grandfather in 1978. The property was originally acquired by her grandfather in 1929. In calculating the holding period and gain or loss on the sale of the property, we followed the guidelines in IRS Publications 544 and 551. These Publications tell us that in the case of property received as a gift, the taxpayer's basis in the property is the same as the donor's adjusted basis (this property was sold at a gain) and the holding period includes the donor's holding period. Applying these rules, the taxpayer's holding period of this property was from 1939 until 2009.

Our question now is whether the donor's holding period is taken into consideration when determining the number of months that the taxpayer held the property for purposes of completing Illinois Schedule F. Does the taxpayer's holding period only include the number of months that she held the property, or does her holding period include her grandfather's holding period?

RULING

Section 203(a)(2)(G) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/203(a)(2)(G)) provides a subtraction modification equal to the valuation limitation amount. IITA Section 203(f) defines the term "valuation limitation amount" as follows:

(1) In general. The valuation limitation amount ... is an amount equal to:

- (A) The sum of the pre-August 1, 1969 appreciation amounts (to the extent consisting of gain reportable under the provisions of Section 1245 or 1250 of the Internal Revenue Code) for all property in respect of which such gain was reported for the taxable year; plus
- (B) The lesser of (i) the sum of the pre-August 1, 1969 appreciation amounts (to the extent consisting of capital gain) for all property in respect of which such gain was reported for federal income tax purposes for the taxable year, or (ii) the net capital gain for the taxable year, reduced in either case by any amount of such gain included in the amount determined under subsection (a)(2)(F) or (c)(2)(H).

(2) Pre-August 1, 1969 appreciation amount.

- (A) If the fair market value of property referred to in paragraph (1) was readily ascertainable on August 1, 1969, the pre-August 1, 1969 appreciation amount for such property is the lesser of (i) the excess of such fair market value over the taxpayer's basis (for determining gain) for such property on that date (determined under the Internal Revenue Code as in effect on that date), or (ii) the total gain realized and reportable for federal income tax purposes in respect of the sale, exchange or other disposition of such property.
- (B) If the fair market value of property referred to in paragraph (1) was not readily ascertainable on August 1, 1969, the pre-August 1, 1969 appreciation amount for such property is that amount which bears the same ratio to the total gain reported in respect of the property for federal income tax purposes for the taxable year, as the number of full calendar months in that part of the taxpayer's holding period for the property ending July 31, 1969 bears to the number of full calendar months in the taxpayer's entire holding period for the property.
- (C) The Department shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

Although Section 203(f) does not define the term "holding period," IITA Section 102 states:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Applying the above provision in Letter Ruling 96-0002 (January 5, 1996), the Department observed that the IITA follows the federal rules for determining "holding period" for purposes of the valuation limitation amount under IITA Section 203(f). In the ruling, the Department determined that a taxpayer who acquired property by gift in 1973 qualified for the valuation limitation subtraction because under federal income tax law the taxpayer's holding period included the donor's holding period commencing in 1952.

Accordingly, provided that for federal income tax purposes the holding period of the taxpayer(s) includes the grandfather's holding period, the same is true for purposes of the valuation limitation subtraction under IITA Sections 203(a)(2)(G) and 203(f).

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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. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's website at www.Iltax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)