

General Information Letter: There is no exception to the suspension of Illinois net loss deductions in IITA Section 207(d) for taxpayers ceasing to do business during the suspension period.

October 25, 2011

Dear:

This is in response to your letter dated October 17, 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:

COMPANY, Inc. (COMPANY), which is a cash basis C corporation, ceased business operations on MONTH X, 2010, and began the process of liquidating the corporation. Due to the length of time to collect accounts receivable from insurance companies COMPANY did not file a final tax return prior to January 1, 2011 but chose to remain on its fiscal year ended March 31, 2011. A Plan of Liquidation was adopted March XX, 2011, and the IRS and IDOR were notified of the corporate dissolution. In the meantime the Illinois corporate income tax increase was passed January 12, 2011, which retroactively denied the carry forward of a net operating loss for the years ending after December 31, 2010. The attached Return Correction Notice is penalizing COMPANY for not timely paying its quarterly estimates. Since the corporation had no tax liability due to the NOL carry forward which was not eliminated until very late in the corporation's March 31, 2011, fiscal year then the assessment of late payment and late estimated payments penalties should be removed.

Another issue is the assessment of the \$XXXX tax liability. Since COMPANY will be filing a final return effective September XX, 2011, now that accounts receivable have been fully collected as of that date, then how will COMPANY ever be able to use the NOL since it will not be in existence in 2015 when the NOL is scheduled to resume? I assume that the NOL should be used on the final pre-2015 tax return, i.e. the September XX, 2011 return, and carried back to obtain a refund of the \$XXXX proposed tax payment for the year ended March 31, 2011. Please advise.

RULING

Estimated Tax

Section 803(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/803(a)) requires a corporation to pay estimated tax where the amount payable as estimated tax can be reasonably expected to exceed \$400. Under IITA Section 803(d), a corporation with a taxable year ending March 31st must make estimated tax payments in 4 equal installments on July 15th, September 15th, December 15th, and March 15th of the taxable year. IITA Section 804(a) imposes a penalty for failure to timely pay each required installment. Under IITA Section 804(c), the amount of each required installment is equal to 25% of the required annual payment. In general, the required annual payment means the lesser of 90% of the tax shown on the return for the taxable year, or 100% (150% for payments due on or after

February 1, 2011 and before February 1, 2012) of the tax shown on the return for the preceding taxable year. However, where the amount of the required installment is lower applying the annualized income installment method, the taxpayer is required to pay only the annualized income installment.

Department Regulations § 100.8010(h) provides for an exception to the estimated tax penalty in certain cases where there is a change in the tax law during the taxable year. The section states:

If the IITA is amended during a taxable year, and the amendment does not contain specific provisions granting relief from penalties under IITA Section 804, no penalty imposed by IITA Section 804 shall apply for late payment of an installment of estimated tax due before the amendment becomes law if, on or before the due date of that installment, the taxpayer has paid the estimated tax due under the annualized income installment method in subsection (d)(2) applied using the IITA as in effect prior to the date the amendment became law.

Example 6

P.A. 93-840 disallows certain subtractions allowed under prior law. P.A. 93-840 did not become law until July 30, 2004, but applies to tax years ending on or after December 31, 2004. A calendar-year taxpayer who, on or before June 15, 2004, had paid the estimated tax due under subsection (d)(2), computed by allowing the subtractions subsequently disallowed by P.A. 93-840, shall not be subject to penalty under IITA Section 804 with respect to the installment due on June 15, 2004.

Taxpayers may compute their estimated tax liability applying the annualized installment method on Form IL-2220. The instructions to Step 6 of the form deal specifically with the computation of the required installment where the IITA is amended during the tax year. Therefore, you may wish to respond to the Department's notice by filing Form IL-2220 and computing the taxpayer's estimated tax liability using the annualized income installment method. Based on the facts you have provided, application of the annualized income installment method should allow the taxpayer to avoid penalty with respect to the first 3 installments of its taxable year ending March 31, 2011.

NOL Deduction

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) for any taxable year ending prior to December 31, 1999, such loss shall be allowed as a carryover or carryback deduction in the manner allowed under Section 172 of the Internal Revenue Code;
- (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; and

- (3) for any taxable year ending on or after December 31, 2003, such loss shall be allowed as a net operating loss carryover to each of the 12 taxable years following the taxable year of such loss, except as provided in subsection (d).

...

(d) In the case of a corporation (other than a Subchapter S corporation), no carryover deduction shall be allowed under this Section for any taxable year ending after December 31, 2010 and prior to December 31, 2014; provided that, for purposes of determining the taxable years to which a net loss may be carried under subsection (a) of this Section, no taxable year for which a deduction is disallowed under this subsection shall be counted.

Accordingly, pursuant to subsection (d), no net operating loss deduction otherwise allowed a corporate taxpayer (other than an S corporation) under subsection (a)(1), (2), or (3) for taxable years ending after December 31, 2010 and prior to December 31, 2014, shall be allowed. There are no exceptions to the rule in subsection (d) for the final taxable year of a corporation or otherwise. In this case, then, the taxpayer is not allowed an Illinois NOL deduction on its final pre-2015 tax return. Unless taxpayer has a taxable year ending on or after December 31, 2014, its NOL carryover may not be deducted.

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
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