

General Information Letter: No subtraction is allowed for amounts included in gross income under IRC Section 45B.

May 15, 2012

Dear:

This is in response to your letter dated April 20, 2012. 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](http://www.ILtax.com).

Your letter states as follows:

COMPANY prepares income tax returns for a number of S Corporation entities providing retail food sales resulting in tips paid to the wait staff.

Internal Revenue Code allows for the calculation of a FICA Tip Credit under Internal Revenue Code Section 45B. A corresponding amount of FICA tax expense must be reduced on the federal return to avoid a dual benefit.

Our question is:

Is the disallowed deduction on Federal 1120S for reduced payroll expense (equal to the amount of the Tax Credit) resulting from Internal Revenue Code Section 45B FICA Tip Credit allowed on the Illinois Form 1120-ST and reported on Schedule M resulting in a subtraction from federal taxable net income on the Illinois Form 1120-ST?

## **RULING**

Section 203(b)(2)(I) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/203(I)) provides the following subtraction modification in the computation of base income of a corporation (including a subchapter S corporation):

With the exception of any amounts subtracted under subparagraph (J), an amount equal to the sum of all amounts disallowed as deductions by (i) Sections 171(a)(2), and 265(a)(2) and amounts disallowed as interest expense by Section 291(a)(3) of the Internal Revenue Code , and all amounts of expenses allocable to interest and disallowed as deductions by Section 265(a)(1) of the Internal Revenue Code, and (ii) for taxable years ending on or after August 13, 1999, Sections 171(a)(2), 265, 280C, 291(a)(3), and 832(b)(5)(B)(i) of the Internal Revenue Code, plus, for tax years ending on or after December 31, 2011, amounts disallowed as deductions by Section 45G(e)(3) of the Internal Revenue Code and, for taxable years ending on or after December 31, 2008, any amount included in gross income under Section 87 of the Internal Revenue Code and the policyholders' share of tax-exempt interest of a life insurance company under Section 807(a)(2)(B) of the Internal Revenue Code (in the case of a life insurance company with gross income from a decrease in reserves for the tax year) or Section 807(b)(1)(B) of the Internal Revenue Code (in the case of a life insurance company allowed a deduction for an increase in reserves for the tax year); the provisions of this subparagraph are exempt from the provisions of Section 250.

IITA Section 203(h) states:

Except as expressly provided by this Section there shall be no modifications or limitations on the amounts of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year, whether in respect to property values as of August 1, 1969 or otherwise.

A taxpayer reports the subtraction modification allowed under IITA Section 203(b)(2)(I) for certain expense deductions disallowed federally on Department Forms 2011 Schedule M, Lines 15a through 15g. As can be seen, Section 203(b)(2)(I) does not include a subtraction modification for amounts disallowed under Internal Revenue Code (IRC) Section 45B(c). Accordingly, under IITA Section 203(h), such amounts may not be subtracted. Because amounts disallowed under IRC Section 45B(c) may not be subtracted, they may not be included on either Schedule M, Lines 15a through 15g or Form 1120-ST.

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)