

IT 12-0017-GIL 07/19/2012 NET INCOME (LOSS) AND NET LOSS DEDUCTION

General Information Letter: C corporation may not use an Illinois net loss carryover deduction in its taxable year ending during calendar 2011, even to offset income earned prior to January 1, 2011, for purposes of applying the change in tax rates effective on that date.

July 19, 2012

Dear:

This is in response to your letter dated July 16, 2012, in which you request a letter ruling. The nature of your request 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.

In your letter you have stated the following:

This letter is in response to your Error Notification Response (Response) dated June 22, 2012, a copy of which is enclosed for reference.

Your Response restates the Department's position that a corporation's use of an NLD is suspended for tax years ending on or after January 1, 2011. The taxpayer agrees with this general rule as set forth in ILCS §5/207(d), a copy of which is attached. However, ILCS §5/202.5(c)(3) appears to provide an exception to the general rule as we stated in our letter dated May 22, 2012 (attached). If ILCS §5/202.5(c)(3) is not the exception to the general rule, then it would seem to serve no purpose. The taxpayer still maintains this exception allows them to use their NLD for the portion of the year prior to January 1, 2011 where specific accounting was elected, which it was.

Response

Section 207(d) of the Illinois Income Tax Act (35 ILCS 5/207) provides, in part:

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, 2012.

Section 202.5 of the Illinois Income Tax Act (35 ILCS 5/202.5) provides the transition rule for the increase in tax rates enacted in Public Act 96-1496 (January 13, 2011). For taxable years that straddle the January 1 effect date of the rate increases, that section basically allows the taxpayer to determine the portions of its income subject to each rate by either pro-rating its income for the taxable year between each period or specifically accounting for the income for each period. Section 202.5(c) provides, in part:

If the taxpayer elects specific accounting:

* * *

(3) the net loss carryforward deduction for the taxable year under Section 207 may not exceed combined net income of both portions of the taxable year, and shall be used against the net income of the portion of the taxable year from the beginning of the

taxable year through December 31 before any remaining amount is used against the net income of the latter portion of the taxable year. (emphasis added)

This provision does not provide an exception to the disallowance of net loss carryover deductions under Section 207, nor is it rendered meaningless by the disallowance of net loss carryovers for C corporations in Section 207(d). It expressly refers to the net loss deduction "for the taxable year," which is zero for C corporations under Section 207(d) but not for trusts or estates, who are also subject to the rate increase and whose net loss deductions are not suspended.

The disallowance of the net loss deduction claimed by this taxpayer is 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