IT 13-0007-GIL 05/07/2013 NET OPERATING LOSS AND NET OPERATING LOSS DEDUCTION

> General Information Letter: Corporation that incurred Illinois net losses, and then ceased conducting business in Illinois, is not barred from carrying the losses forward and deducting them in subsequent years when it is again conducting business in Illinois, subject to the same limitations as if it had continuously conducted business in Illinois.

May 7, 2013

Dear:

This is in response to your letter dated April 17, 2013. 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:

> Could you please provide us with written information stating whether a corporation that has closed doing business in your state could resume carrying its net operating loss should it decide to reopen doing business in the future? If so, please provide the regulations which govern such a continuation of its NOL.

RULING

Section 207 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/207) states, in part, as follows:

> (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).
>
> (a-5) Election to relinquish carryback and order of application of losses.
>
> (A) For losses incurred in tax years ending prior to December 31, 2003, the taxpayer may elect to relinquish the entire carryback period with respect to such loss. Such election shall be made in the form and manner prescribed by the Department and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year in which

such loss is incurred, and such election, once made, shall be irrevocable.

(B) The entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.

(b) Any loss determined under subsection (a) of this Section must be carried back or carried forward in the same manner for purposes of subsections (a) and (b) of Section 201 of this Act as for purposes of subsections (c) and (d) of Section 201 of this Act.

….

(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, 2012, and no carryover deduction shall exceed $100,000 for any taxable year ending on or after December 31, 2012 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, or for which the deduction would exceed $100,000 if not for this subsection, shall be counted.

Under this section, except to the extent provided in subsection (a-5)(A), a taxpayer may not elect the taxable years to which an Illinois net operating loss may be carried. Under the ordering rule in subsection (a-5)(B), the amount of loss that may be carried to a taxable year is the excess of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the preceding taxable years to which such loss may be carried.

A taxpayer that ceases to do business in Illinois does not, on such account, lose any tax attributes it may have acquired under IITA Section 207. Accordingly, assuming that a loss is otherwise carried under the provisions of IITA Section 207 to a taxable year when the taxpayer resumes carrying on business in Illinois, the taxpayer is allowed any Illinois net loss deduction as specified in that section.

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)