

IT 14-0017 GIL 10/06/2014 Net Income (Loss) and Net Loss Deductions

If no timely election was made under IITA Section 207(a-5) to carry a loss forward only, that loss must be carried back. (This is a GIL.)

October 6, 2014

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter dated September 23, 2104. 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:

I am writing in regards to a letter we wrote in response to your Error Notification Response dated MONTH1 XX, 20XX for COMPANY (FEIN XX-XXXXXXX). I have attached a copy of our previous letter, along with any pertinent documents. We have not received any correspondence on this and would like to know the status of this account.

Your previous letter, to which you refer, reads:

I am writing in regards to COMPANY (FEIN: XX-XXXXXXX) and the disallowance of the Illinois net loss deduction. We paid the \$XX,XXX.XX tax due from the MONTH2 XX, 20XX notice so we do not incur any further penalties or interest. However, we are asking that the 20XX loss merged out from FEIN XX-XXXXXXX be carried forward rather than carried back. We inadvertently did not check the box to forgo the NLD carryback period. This was merely an oversight on our part.

RULING

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) ...

(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.

(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.

Department Regulations Section 100.2330(c) states as follows:

1) For losses incurred in tax years ending prior to December 31, 2003, IITA Section 207(a-5)(A) allows the taxpayer to *elect to relinquish the entire carryback period with respect to such loss*. Such election shall be made on the taxpayer's return for the taxable year in which the loss is incurred and shall be made by the due date (including extensions of time) for filing of such return. If an election is made, the loss may be carried forward and deducted only in years subsequent to the taxable year in which the loss was incurred. *Such election, once made, shall be irrevocable.*

...

3) If the timely filed return for the taxable year reflects Illinois income and:

A) a finalized federal change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on an amended return or form prescribed by the Department within the 120 day time period prescribed by Section 506(b) of the Illinois Income Tax Act, or

B) an Illinois audit or other Illinois change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on forms prescribed by the Department at the time the loss is first reported to Illinois.

On the 20XX Form IL-1120, the election to forego the carryback period for an Illinois net loss is made by checking the box below line 1 of Part IV of the return. The General Instructions to the 20XX Form 1120, at page 3, explain how to make the election and when the election must be made.

Note: You may make the election to forego the Illinois NLD carryback period by checking the box below Part IV, Line 1. This election must be made by the extended due date of the loss year return. **Once made, the election is irrevocable.** (Emphasis in original)

The same information is repeated in the instructions to Part IV, Line 1:

Line 1 – Follow the instructions on the form. If this amount is a loss, you may carry it to other years as an Illinois net loss deduction (NLD). If you are electing to forego the Illinois NLD carryback period, you must check the box below Line 1. **This election must be made by the extended due date of this return. Once made, the election is irrevocable.** (See General Information, “What if I have an Illinois net loss deduction (NLD)?”) (Emphasis in original)

In this case, COMPANY did not elect by the extended due date of its 20XX IL-Form 1120 to forego the carryback period for its 20XX Illinois net operating loss by checking the box below Line 1, Part IV. In addition, neither circumstance specified in Department Regulations Section 100.2330(c)(3) applies. Therefore, the loss must be carried as provided in IITA Section 207(a-5)(B) and Department Regulations Section 100.2330(d).

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)