

The Illinois Income Tax Act does not allow or require modifications to the attribute reductions made for federal income tax purposes as the result of excluding discharge of indebtedness income from taxable income.

July 10, 2015

Re: Illinois income tax

Dear Mr. XXXX:

This is in response to your letter dated June 15, 2015. 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:

We are writing for your guidance in resolving an ongoing dispute between COMPANY and Illinois Department of Revenue regarding how to properly report a subtraction for federal and state attribute reduction adjustments.

In the 2008 tax year, COMPANY emerged from bankruptcy. In accordance with federal regulations the company exchanged tax attributes in exchange for the discharge of indebtedness. Prior to 2008, the company had carried back a significant amount of net operating losses and general business credits federally. The result was that the assets exchanged for federal attribute reduction consist primarily of depreciable assets, amortizable assets, other assets and investments. This differs significantly from the attribute reduction assets exchanged in your state where net operating losses account for the majority of assets exchanged for the discharge of indebtedness. As a result of this significant basis difference the company has an ongoing adjustment in the amount of depreciation, amortization and other expense differences. This will be the case for many years. We ask that you offer us guidance in how to report this significant difference on the IL-1120.

Originally, COMPANY submitted the 2009 Form IL-1120 along with appropriate schedules deducting \$5,480,163 on line 23 (other subtractions). The company received a Return Correction Notice dated September 12, 2011 stating that Illinois had reduced our "other subtractions" by the \$5,480,163. We responded on October 6, 2011 with an explanation of this subtraction along with documentation explaining the attribute reduction adjustments. At the time, COMPANY was going through an Illinois audit. We explained the situation to the auditor who advised us to adjust Form IL-1120 by netting the subtraction to the line 1 (federal taxable income) for IL-1120. Following this guidance, we submitted a Form IL-1120X, netting the attribute reduction adjustments with federal taxable income. Next we received an Error Notification Response stating that we need to submit a federal 1120X showing adjusted federal taxable income, which obviously does not apply.

After many conversations and attempts to explain our position, Illinois Department of Revenue is disallowing us to report the federal and state attribute adjustments on any line of the IL-1120. In accordance with the Illinois bankruptcy cancellation of debt adjustment requirements, however, these adjustments should somehow be allowed. We are seeking assistance from your department as to the best way to submit this adjustment on the 2009 IL-1120 as well as all of the years following until the depreciation and amortization of the asset basis has concluded.

RULING

Under the Illinois Income Tax Act (“IITA” ; 35 ILCS 5/101 *et seq.*), the calculation of a corporation’s Illinois base income begins with its federal taxable income, which is then adjusted by the addition and subtraction modifications set forth in IITA Section 203(b). Regarding these modifications, IITA Section 203(h) states that no modifications shall be made to federal taxable income except as expressly provided in Section 203. There is no provision in IITA Section 203 that authorizes the subtraction modification described in your letter. Similarly, the IITA does not provide for an asset basis that is different from the asset basis that applies for federal income tax purposes. As discussed below, IITA Section 207 may require reduction of a taxpayer’s Illinois net loss or Illinois net loss carryovers where the taxpayer has excluded discharge of indebtedness income under IRC Section 108(a). However, no provision of the IITA mandates reduction of asset basis different from the basis reduction required under IRC Section 108(b)(2)(E), nor does the IITA require reduction of any Illinois credits incident to excluded discharge of indebtedness income. In all events, a taxpayer’s asset basis is the same for both federal and Illinois income tax purposes. Therefore, the Department’s notices in this case were properly issued.

Section 207(a) of the IITA allows corporations a deduction for Illinois net losses. For net losses incurred for taxable years ending on or after December 31, 2003, the loss may generally be carried over to the 12 taxable years following the taxable year of the loss. However, under IITA Section 207(c) the net loss and net operating loss carryover must be reduced if the taxpayer is required to reduce a federal net operating loss or federal net operating loss carryover under Internal Revenue Code (IRC) Section 108(b)(2)(A) on account of excluded discharge of indebtedness income. IITA Section 207(c) states:

(c) Notwithstanding any other provision of this Act, for each taxable year ending on or after December 31, 2008, for purposes of computing the loss for the taxable year under subsection (a) of this Section and the deduction taken into account for the taxable year for a net operating loss carryover under paragraphs (1), (2), and (3) of subsection (a) of this Section, the loss and net operating loss carryover shall be reduced in an amount equal to the reduction to the net operating loss and net operating loss carryover to the taxable year, respectively, required under Section 108(b)(2)(A) of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the amount of discharge of indebtedness income that is excluded from gross income for the taxable year (but only if the taxable year ends on or after December 31, 2008) under Section 108(a) of the Internal Revenue Code and that would have been allocated and apportioned to this State under Article 3 of this Act but for that exclusion, and the denominator of which is the total amount of discharge of indebtedness income excluded from gross income under Section 108(a) of the Internal Revenue Code for the taxable year. The reduction required under this subsection (c) shall be made after the determination of Illinois net income for the taxable year in which the indebtedness is discharged.

Department Regulations § 100.2310(c) provides rules under IITA Section 207(c). A copy of the regulation is enclosed. As indicated by Regulations § 100.2310(c)(1)(B), the amount of reduction, if any, depends on the amount of the reduction required under IRC Section 108(b)(2)(A) to your federal net operating loss or federal net operating loss carryover. Therefore, if you were required under federal law to reduce asset basis or general business credits rather than a federal net operating loss or federal net operating loss carryover, then you would not be required under IITA Section 207(c) to reduce an Illinois net loss or Illinois net loss carryover. In addition, in no event should you determine an asset basis for Illinois income tax purposes that differs from your asset basis for federal income tax purposes.

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 questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)

