

Regulation 100.9400 requires Department to credit overpayments to liability for tax imposed under the IITA. (This is a GIL)

May 10, 2019

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter received April 19, 2019, in which you request information regarding Illinois income tax. 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](http://www.tax.illinois.gov).

Your letter states as follows:

I am doing a 50 state survey of the law relevant to a state's ability to withhold a refund owed a taxpayer based on a deficiency in a prior year.

I set forth the law of your state that allows it to make such an offset.

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=577&ChapterID=8>

I note that most states' legislation makes such an offset mandatory, if the deficiency has been sufficiently established as a matter of law.

However, your state's legislation uses the word "may" or other such language to suggest that the state need not, in any specific case, withhold a refund based on a prior year's established tax deficiency.

I believe all states automatically withhold refunds if a pending deficiency appears in the taxpayers record. I am looking for confirmation of this (or course if that is not the case with respect to your state, I would like to know that).

## **RULING**

Section 909 of the Illinois Income Tax Act, 35 ILCS 5/909, states, in part, as follows:

- (a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to such person or credit any balance to that person pursuant to an election under subsection (b) of this Section.

emphasis added. As of the date of this letter, Section 909 may be found here: <http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=003500050HArt%2E+9&ActID=577&ChapterID=8&SeqStart=13500000&SeqEnd=15700000>

Section 2505-275 of the Civil Administrative Code of Illinois, Department of Revenue, 20 ILCS 2505/2505-275, states as follows:

Sec. 2505-275. Tax overpayments. In the case of overpayment of any tax liability arising from an Act administered by the Department, the Department may credit the amount of the overpayment and any interest thereon against any final tax liability arising under that or any other Act administered by the Department. The Department may enter into agreements with the Secretary of the Treasury of the United States (or his or her delegate) to offset all or part of an overpayment of such a tax liability against any liability arising from a tax imposed under Title 26 of the United States Code. The Department may collect a fee from the Secretary of the Treasury of the United States (or his or her delegate) to cover the full cost of offsets taken, to the extent allowed by federal law, or, if not allowed by federal law, from the taxpayer by offset of the overpayment.

emphasis added. As of the date of this letter, Section 2505-275 may be found here: <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=340&ChapterID=5>

Section 100.9400 of the Department's Income Tax Rules, 86 Ill. Adm. Code 100.9400, states, in part, as follows:

- a) In General. The Department, within the applicable period of limitations for a claim for refund, shall credit the amount of any overpayment, including interest allowed on the overpayment, against any liability for tax imposed under the IITA or any other Act administered by the Department on the person who made the overpayment, and it shall refund the balance to that person. (See IITA Section 909(a) and Section 2505-275 of the Department of Revenue Law [20 ILCS 2505/2505-275].)

emphasis added. As of the date of this letter, Section 100.9400 may be found here: <http://www.ilga.gov/commission/jcar/admincode/086/08600100BB94000R.html>

As outlined above, there are 2 Illinois statutes which authorize the Illinois Department of Revenue to apply an overpayment to any liability for tax imposed under the Illinois Income Tax Act or any other Act administered by the Department on the person who made the overpayment. The Department has promulgated administrative rules to implement that statutory authority. In Illinois, administrative rules and regulations are given the same force and effect as statutes. Therefore, the requirement to apply an overpayment against a tax liability imposed by the Department is treated as mandatory.

IT 19-0007-GIL

Page 3

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 regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Michael D. Mankowski  
Associate Counsel - Income Tax