

IT-23-00011-GIL 06/06/2023 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.)

June 6, 2023

NAME/ADDRESS

Re: Illinois Income Tax

Dear NAME:

This is in response to your letter dated January 18, 2021, 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.

Your letter states as follows:

I am writing to the legal department as recommended by the IDR agent I have spoken with. I do not agree with what happened here. The IDR carried back my NLD deduction from YEAR and YEAR to YEAR and YEAR without my knowledge. I paid my tax of \$\$\$ in YEAR and \$\$\$ in YEAR. I paid with 2 separate checks. Because they carried back the deductions it caused my YEAR and subsequent years to have tax due. I do not see how this can be fair and just. I also went over this with a CPA. He agrees that this is unfair. I was not refunded the \$\$\$ or the \$\$\$ taxes that were nullified from bringing the NLD back unbeknownst to me. I do not have the funds to pay incorrect taxes from 20 years ago. The pandemic has nearly put me out of business. The \$\$\$+\$\$\$ () credited to my account along with all the fees and interest. I could possibly settle with that if I could have some time to pay it. Thank you for your time and consideration.

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;

(3)...

(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, in pertinent part, 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 the loss*. The election is made on the taxpayer's return for the taxable year in which the loss is incurred. The election may be made only on or before the due date (including extensions of time) for filing the return. If an election is made, the loss is carried forward and deducted only in years subsequent to the taxable year in which the loss was incurred. The *election, once made, is irrevocable*. (IITA Section 207(a-5)(A))

...

- 3) If the timely 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 IITA Section 506(b); 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.

Department Regulations Section 100.2330(d) states, in pertinent part, as follows:

Portion of Illinois Net Loss That Is a Carryback or a Carryover to the Taxable Year in Issue. Pursuant to IITA Section 207(a-5)(B), the entire amount of a loss is carried to the earliest taxable year to which the loss may be carried. The amount of the loss, which is carried to each of the other taxable years, is the excess, if any, of the amount of the loss over the sum of the deductions for carryback or carryover of the loss allowable for each of the prior taxable years to which the loss may be carried.

On the 1999 and 2000 Form IL-1120-ST, the election to forego the carryback period for an Illinois net loss is made by checking the box below line 1a of Part II of the return. The General Instructions to the 1999 Form IL-1120-ST, at page 3, explain how to make the election and when it must be made.

Note: You may make the election to forego the Illinois NLD carryback period by checking the box below Part II, Line 1a. 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 II, Line 1a:

Line 1a — 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 1a. 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)

Likewise, the General Instructions to the 2000 Form IL-1120-ST, at page 2, also explains how to make the election and when it must be made.

Note: You may make the election to forgo the Illinois NLD carryback period by checking the box below Part II, Line 1a. 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, once again, repeated in the instructions to Part II, Line 1a:

Line 1a — 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 forgo the Illinois NLD carryback period, you must check the box below Line 1a. **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 1999 or 2000 IL-Form-1120-ST to forego the carryback period for its 1997 and 1998 Illinois net operating losses by checking the box below Line 1a, Part II. In addition, based on what you have provided, neither circumstance specified in Department Regulations Section 100.2330(c)(3) appear to apply. Therefore, the loss was required to be carried as provided in IITA Section 207(a-5)(B) and Department Regulations Section 100.2330(d).

If you believe that you cannot pay your tax delinquencies in full because of a financial hardship and you would like to enter into an installment plan, you may file a Form CPP-1, Installment Payment Plan Request, or request a payment plan online using MyTax.Illinois.gov. I have attached a copy of the Form CPP-1 for your convenience. Additional copies may be found on the Department’s website www.tax.illinois.gov.

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)

cc: Daily File
Correspondence file: