

ILLINOIS REGISTER

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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
100.2160	Amendment
100.2193	Amendment
100.2330	Amendment
- 4) Statutory Authority: Implemented by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends 100.2160 and 100.2193 to reflect new sunset dates for the Research and Development Credit and Student Assistance Contributions Credit enacted by Public Acts 103-0592 and 103-0595.  
  
This rulemaking implements the changes to the IL net loss deduction made by Public Act 103-0592 limiting the amount of losses that may be deducted to \$500,000 in tax years ending on or after December 31, 2024 and prior to December 31, 2027.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: No
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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- 13) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: No impact on these entities
  - B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting and income tax preparation.
  - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: No adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 100  
INCOME TAX

SUBPART A: TAX IMPOSED

Section	
100.2000	Introduction
100.2050	Net Income (IITA Section 202)
100.2055	Standard Exemption (IITA Section 204)
100.2060	Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

SUBPART B: CREDITS

Section	
100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA Section 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone and River Edge Redevelopment Zone (IITA Section 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
100.2135	REV Illinois Investment Tax Credit (IITA Section 237)
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA Section 201(k))
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2164	Data Center Investment Credit (IITA Section 229)
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)
100.2171	Angel Investment Credit (IITA 220)
100.2175	Invest in Kids Credit (IITA 224)
100.2179	Volunteer Emergency Worker Credit (IITA Section 234)
100.2180	Credit for Residential Real Property Taxes (IITA 208)
100.2181	Credit for Instructional Materials and Supplies (IITA Section 225)
100.2185	Film Production Services Credit (IITA Section 213)

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- 100.2190 Tax Credit for Affordable Housing Donations (IITA Section 214)
- 100.2193 Student-Assistance Contributions Credit (IITA 218)
- 100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)
- 100.2196 Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
- 100.2197 Foreign Tax Credit (IITA Section 601(b)(3))
- 100.2198 Economic Development for a Growing Economy Credit (IITA 211)
- 100.2199 Illinois Earned Income Tax Credit (IITA Section 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS  
OCCURRING PRIOR TO DECEMBER 31, 1986

Section

- 100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
- 100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
- 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
- 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
- 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
- 100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES  
OCCURRING ON OR AFTER DECEMBER 31, 1986

Section

- 100.2300 Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)

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- 100.2310 Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
- 100.2320 Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
- 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986 (IITA Section 207)
- 100.2340 Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns
- 100.2350 Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership
- 100.2360 Illinois Net Losses and Illinois Net Loss Deductions for Losses of Cooperatives Occurring On or After December 31, 1986 (IITA Section 203(e)(2)(F))

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section

- 100.2405 Gross Income, Adjusted Gross Income, Taxable Income and Base Income Defined; Double Deductions Prohibited; Legislative Intention (IITA Section 203(e), (g) and (h))
- 100.2410 Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
- 100.2430 Addition and Subtraction Modifications for Transactions with 80/20 and Noncombination Rule Companies
- 100.2435 Addition Modification for Student-Assistance Contribution Credit (IITA Sections 203(a)(2)(D-23), (b)(2)(E-16), (c)(2)(G-15), (d)(2)(D-10))
- 100.2450 IIT Refunds (IITA Section 203(a)(2)(H), (b)(2)(F), (c)(2)(J) and (d)(2)(F))
- 100.2455 Subtraction Modification: Federally Disallowed Deductions (IITA Sections 203(a)(2)(M), 203(b)(2)(I), 203(c)(2)(L) and 203(d)(2)(J))
- 100.2465 Claim of Right Repayments (IITA Section 203(a)(2)(P), (b)(2)(Q), (c)(2)(P) and (d)(2)(M))
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone and River Edge Redevelopment Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and

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- 203(d)(2)(K)  
100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

- Section  
100.2510 Subtraction for Contributions to Illinois Qualified Tuition Programs (Section 529 Plans) (IITA Section 203(a)(2)(Y))  
100.2565 Subtraction for Recovery of Itemized Deductions (IITA Section 203(a)(2)(I))  
100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))  
100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF CORPORATIONS

- Section  
100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))  
100.2657 Subtraction Modification for High Impact Business Interest (IITA Section 203(b)(2)(M-1))  
100.2665 Subtraction for Payments to an Attorney-in-Fact (IITA Section 203(b)(2)(R))  
100.2668 Subtraction for Dividends from Controlled Foreign Corporations (IITA Section 203(b)(2)(Z))

SUBPART H: BASE INCOME OF TRUSTS AND ESTATES

- Section  
100.2770 Subtraction for Recovery of Itemized Deductions of a Decedent (IITA Section 203(c)(2)(W))  
100.2775 Subtraction for Refunds of Taxes Paid to Other States for Which a Credit Was Claimed (IITA Section 203(c)(2)(X))

SUBPART I: BASE INCOME OF PARTNERSHIPS

- Section  
100.2850 Subtraction Modification for Personal Service Income or Reasonable

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Allowance for Compensation to Partners (IITA Section 203(d)(2)(H))

SUBPART J: GENERAL RULES OF ALLOCATION AND  
APPORTIONMENT OF BASE INCOME

Section

- 100.3000 Terms Used in Article 3 (IITA Section 301)
- 100.3010 Business and Nonbusiness Income (IITA Section 301)
- 100.3015 Business Income Election (IITA Section 1501)
- 100.3020 Resident (IITA Section 301)

SUBPART K: COMPENSATION

Section

- 100.3100 Compensation (IITA Section 302)
- 100.3110 State (IITA Section 302)
- 100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART L: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3200 Taxability in Other State (IITA Section 303)
- 100.3210 Commercial Domicile (IITA Section 303)
- 100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

- 100.3300 Allocation and Apportionment of Base Income (IITA Section 304)
- 100.3310 Business Income of Persons Other Than Residents (IITA Section 304) – In General
- 100.3320 Business Income of Persons Other Than Residents (IITA Section 304) – Apportionment (Repealed)
- 100.3330 Business Income of Persons Other Than Residents (IITA Section 304) – Allocation
- 100.3340 Business Income of Persons Other Than Residents (IITA Section 304)
- 100.3350 Property Factor (IITA Section 304)
- 100.3360 Payroll Factor (IITA Section 304)
- 100.3370 Sales Factor (IITA Section 304)

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- 100.3371 Sales Factor for Telecommunications Services
- 100.3373 Sales Factor for Publishing
- 100.3380 Special Rules (IITA Section 304)
- 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
- 100.3400 Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA Section 304(c))
- 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
- 100.3420 Apportionment of Business Income of Insurance Companies (IITA Section 304(b))
- 100.3450 Apportionment of Business Income of Transportation Companies (IITA Section 304(d))
- 100.3500 Allocation and Apportionment of Base Income by Nonresident Partners
- 100.3600 Combined Apportionment for Taxpayers Using Different Apportionment Formulas (IITA Section 1501(a)(27))

SUBPART N: ACCOUNTING

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- 100.4100 Taxable Years (IITA Section 401)
- 100.4500 Carryovers of Tax Attributes (IITA Section 405)

SUBPART O: TIME AND PLACE FOR FILING RETURNS

- Section
- 100.5000 Time for Filing Returns (IITA Section 505)
- 100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
- 100.5040 Innocent Spouses
- 100.5050 Frivolous Returns
- 100.5060 Reportable Transactions (IITA Section 501(b))
- 100.5070 List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions
- 100.5080 Registration of Tax Shelters (IITA Section 1405.5)

SUBPART P: COMPOSITE RETURNS



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Section

- 100.5100 Composite Returns: Eligibility (IITA Section 502(f))
- 100.5110 Composite Returns: Responsibilities of Authorized Agent
- 100.5120 Composite Returns: Individual Liability
- 100.5130 Composite Returns: Required forms and computation of Income (IITA Section 502(f))
- 100.5140 Composite Returns: Estimated Payments
- 100.5150 Composite Returns: Tax, Penalties and Interest
- 100.5160 Composite Returns: Credits on Separate Returns
- 100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"
- 100.5180 Composite Returns: Overpayments and Underpayments

SUBPART Q: COMBINED RETURNS

Section

- 100.5200 Filing of Combined Returns
- 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns
- 100.5205 Election to File a Combined Return
- 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns
- 100.5215 Filing of Separate Unitary Returns (IITA Section 304(e))
- 100.5220 Designated Agent for the Members (IITA Section 304(e))
- 100.5230 Combined Estimated Tax Payments
- 100.5240 Claims for Credit of Overpayments
- 100.5250 Liability for Combined Tax, Penalty and Interest
- 100.5260 Combined Amended Returns
- 100.5265 Common Taxable Year
- 100.5270 Computation of Combined Net Income and Tax (IITA Section 304(e))
- 100.5280 Combined Return Issues Related to Audits

SUBPART R: PAYMENTS

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- 100.6000 Payment on Due Date of Return (IITA Section 601)

SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section

- 100.7000 Requirement of Withholding (IITA Section 701)
- 100.7010 Compensation Paid in this State (IITA Section 701)
- 100.7020 Transacting Business Within this State (IITA Section 701)

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- 100.7030 Payments to Residents (IITA Section 701)
- 100.7034 Investment Partnership Withholding (IITA Section 709.5)
- 100.7035 Nonresident Partners, Subchapter S Corporation Shareholders, and Trust Beneficiaries (IITA Section 709.5)
- 100.7036 Withholding of Lottery, Gambling and Sports Wagering Winnings (IITA Section 710)
- 100.7040 Employer Registration (IITA Section 701)
- 100.7050 Computation of Amount Withheld (IITA Section 702)
- 100.7060 Additional Withholding (IITA Section 701)
- 100.7070 Voluntary Withholding (IITA Section 701)
- 100.7080 Correction of Underwithholding or Overwithholding (IITA Section 701)
- 100.7090 Reciprocal Agreement (IITA Section 701)
- 100.7095 Cross References

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

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- 100.7100 Withholding Exemption (IITA Section 702)
- 100.7110 Withholding Exemption Certificate (IITA Section 702)
- 100.7120 Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART U: INFORMATION STATEMENT

- Section
- 100.7200 Reports for Employee (IITA Section 703)

SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

- Section
- 100.7300 Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
- 100.7310 Returns Filed and Payments Made on Annual Basis (IITA Sections 704 and 704A)
- 100.7320 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)
- 100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)
- 100.7330 Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)
- 100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)

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- 100.7350 Domestic Service Employment (IITA Sections 704 and 704A)
- 100.7360 Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
- 100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
- 100.7380 Economic Development for a Growing Economy (EDGE) and Small Business Job Creation Credit (IITA Section 704A(g) and (h))
- 100.7390 Minimum Wage Tax Credit (IITA Section 704A(i))

SUBPART W: ESTIMATED TAX PAYMENTS

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- 100.8000 Payment of Estimated Tax (IITA Section 803)
- 100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART X: COLLECTION AUTHORITY

- Section
- 100.9000 General Income Tax Procedures (IITA Section 901)
- 100.9010 Collection Authority (IITA Section 901)
- 100.9020 Child Support Collection (IITA Section 901)

SUBPART Y: NOTICE AND DEMAND

- Section
- 100.9100 Notice and Demand (IITA Section 902)

SUBPART Z: ASSESSMENT

- Section
- 100.9200 Assessment (IITA Section 903)
- 100.9210 Waiver of Restrictions on Assessment (IITA Section 907)

SUBPART AA: DEFICIENCIES AND OVERPAYMENTS

- Section
- 100.9300 Deficiencies and Overpayments (IITA Section 904)
- 100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)
- 100.9320 Limitations on Notices of Deficiency (IITA Section 905)

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100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART BB: CREDITS AND REFUNDS

Section

100.9400 Credits and Refunds (IITA Section 909)  
100.9410 Limitations on Claims for Refund (IITA Section 911)  
100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART CC: INVESTIGATIONS AND HEARINGS

Section

100.9500 Access to Books and Records (IITA Section 913)  
100.9505 Access to Books and Records – 60-Day Letters (IITA Section 913)  
(Repealed)  
100.9510 Taxpayer Representation and Practice Requirements  
100.9520 Conduct of Investigations and Hearings (IITA Section 914)  
100.9530 Books and Records

SUBPART DD: JUDICIAL REVIEW

Section

100.9600 Administrative Review Law (IITA Section 1201)

SUBPART EE: DEFINITIONS

Section

100.9700 Unitary Business Group Defined (IITA Section 1501)  
100.9710 Financial Organizations (IITA Section 1501)  
100.9715 Transportation Companies (IITA Section 304(d))  
100.9720 Nexus  
100.9730 Investment Partnerships (IITA Section 1501(a)(11.5))  
100.9750 Corporation, Subchapter S Corporation, Partnership and Trust Defined  
(IITA Section 1501)

SUBPART FF: LETTER RULING PROCEDURES

Section

100.9800 Letter Ruling Procedures

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SUBPART GG: MISCELLANEOUS

Section

100.9900 Tax Shelter Voluntary Compliance Program  
100.9910 State Tax Preparer Oversight Act [35 ILCS 35]

100.APPENDIX A Business Income Of Persons Other Than Residents  
(Repealed)  
100.TABLE A Example of Unitary Business Apportionment (Repealed)  
100.TABLE B Example of Unitary Business Apportionment for Groups  
Which Include Members Using Three-Factor and Single-  
Factor Formulas (Repealed)

**AUTHORITY:** Implementing Section 505 of the Illinois Income Tax Act [35 ILCS 5] as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505].

**SOURCE:** Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990;

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amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005;

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amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014; amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill. Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg. 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015; amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill. Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016; amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575, effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3, 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg. 14217, effective November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018; amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30, 2020; emergency amendment at 44 Ill. Reg.

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4700, effective March 4, 2020, for a maximum of 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10, 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill. Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022; amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317, effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030, effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023; emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243, effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at 48 Ill. Reg. 10281, effective June 25, 2024; amended at 48 Ill. Reg. 10846, effective July 11, 2024; amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: CREDITS

**Section 100.2160 Research and Development Credit (IITA Section 201(k))**

- a) *For tax years ending after July 1, 1990 and prior to December 31, 2003, and tax years ending on or after December 31, 2004 and prior to January 1, 2027, each taxpayer shall be allowed a credit against the tax imposed by IITA Section 201(a) and (b) for increasing research activities in this State. It is the intent of the General Assembly that the research and development credit under IITA Section 201(k) applies continuously for all tax years ending on or after December 31, 2004 and ending prior to ~~January 1, 2032~~ January 1, 2027, including, but not limited to, the period beginning on January 1, 2016, the date on which the credit expired prior to enactment of PA 100-22, and ending on July 6, 2017, the effective date of PA 100-22. All actions taken in reliance on the continuation of the credit under IITA Section 201(k) by any taxpayer are hereby validated. (IITA 201(k))*
- b) *The credit allowed shall be equal to 6½% of the qualifying expenditures for increasing research activities in this State. (IITA Section 201(k))*



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- c) Not all "research" will qualify for the credit. Nor will every expenditure associated with research qualify for the credit. Qualified research is defined in IRC section 41(d). Qualifying expenditures means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under IRC section 41 and which are conducted in this State.
  - 1) IRC section 41(b) defines "qualifying research expenses" as the sum of the in-house research expenses and the contract research expenses paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer.
  - 2) Qualifying expenditures also include basic research payments. Basic research payments are defined in IRC section 41(e).
- d) Qualifying expenditures for increasing research activities in this State means the excess of qualifying expenditures for the taxable year in which incurred over qualifying expenditures for the base period. Qualifying expenditures for the base period means the average of the qualifying expenditures for each year in the base period.
- e) Base period means the 3 taxable years immediately preceding the taxable year for which the determination is being made. For purposes of computing the average qualifying expenditures for the base period:
  - 1) For taxable years after a taxpayer has succeeded to the tax items of a corporation under IITA Section 405(a), qualifying expenditures incurred by the corporation during the base period shall be deemed to be qualifying expenditures of the taxpayer.
  - 2) If the taxpayer incurred no qualifying expenditures during a base period year, the qualifying expenditures for that year are zero, even if the taxpayer was not in existence or conducting any business in this State during that year.
  - 3) If the taxpayer was doing business in this State for only part of a base period year, the qualifying expenditures for that year shall be equal to the qualifying expenditures actually incurred, multiplied by 365 and divided by the number of days in the portion of the taxable year during which the taxpayer was doing business in this State.

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- 4) Qualifying expenditures incurred in taxable years in which the taxpayer did not qualify for the credit, including taxable years ending on or after December 31, 2003 and prior to December 31, 2004 must be included in the computation of qualifying expenditures for the base period.
- f) *Any credit in excess of the tax liability for the taxable year may be carried forward to offset the income tax liability of the taxpayer for the next 5 years or until it has been fully utilized, whichever occurs first (IITA Section 201(k)), provided that no credit earned in a tax year ending prior to December 31, 2003 may be carried forward to any year ending on or after December 31, 2003. If an unused credit is carried forward to a given year from 2 or more earlier years, that credit arising in the earliest year is applied first. If a tax liability for the given year remains, the credit from the next earliest year is applied. Any remaining unused credit or credits can be carried forward to the next following year in which a tax liability exists. However, the credit can only be carried forward 5 years from the year in which the taxpayer incurred the expense for which the credit was given. Any unused credit is then forfeited.*
- g) Combined Returns. In the case of taxpayers filing combined returns, Section 100.5270(d) details the manner in which the credit is determined.
- h) Pass-through of Credits to Partners and Subchapter S Corporation Shareholders
  - 1) For tax years beginning on and after January 1, 1999, partners and shareholders of subchapter S corporations *shall be allowed a credit under this Section to be determined in accordance with the determination of income and distributive share of income under IRC sections 702 and 704 and subchapter S of the Internal Revenue Code.* (IITA Section 201(k)) No inference shall be drawn from the enactment of PA 91-644, which expressly allows this pass-through of credits, in construing IITA Section 201(k) for tax years beginning prior to January 1, 1999.
  - 2) Repeal and re-enactment of the credit. Due to the repeal of the credit for taxable years ending on or after December 31, 2003, and

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the re-enactment of the credit for taxable years ending on or after December 31, 2004:

- A) A partner or shareholder may not claim a credit passed through from a partnership or subchapter S corporation for any taxable year of the partner or shareholder ending on or after December 31, 2003 and prior to December 31, 2004, even if the credit was earned in a taxable year of the partnership or subchapter S corporation ending prior to December 31, 2003.
- B) No credit may be earned by a partnership or subchapter S corporation for a taxable year ending on or after December 31, 2003 and prior to December 31, 2004, and passed through to a partner or shareholder, even if the partner or shareholder would have reported the credit for a taxable year ending on or after December 31, 2004.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2193 Student-Assistance Contributions Credit (IITA 218)**

- a) For taxable years ending on or after December 31, 2009 and on or before ~~December 31, 2024~~ December 31, 2029, each taxpayer is allowed a credit against the taxes imposed under IITA Section 201(a) and (b) in an amount equal to 25% of each matching contribution made by the taxpayer during the taxable year. (See IITA Section 218(a).)
- b) Matching Contribution. For purposes of this Section, the term "matching contribution" means the total amount paid by the taxpayer during the taxable year to an individual Illinois College Savings Pool account or Illinois Prepaid Tuition Trust Fund account for the benefit of a designated beneficiary, to the extent the amount paid does not exceed the total contributions made by an employee of the taxpayer during the taxpayer's taxable year to the same account for the benefit of the same designated beneficiary.
- c) Limitation. The maximum credit allowed under IITA Section 218 and this Section with respect to any contributing employee shall not exceed \$500 per taxable year.

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EXAMPLE: Taxpayer is a calendar year taxpayer. Employee A is an employee of Taxpayer for the entire 2009 calendar year. During 2009, Employee A makes contributions totaling \$6,000 each to three separate College Savings Pool accounts established for the benefit of each of Employee A's three children. During 2009, Taxpayer makes payments totaling \$2,000 each to the same three accounts. Under subsection (a) of this Section, Taxpayer would be allowed a \$500 credit for each of the three \$2,000 matching contributions made during the taxable year, for a total credit of \$1,500. However, under this subsection (c), Taxpayer may claim a maximum credit of only \$500 in respect of the total of its contributions that match contributions made by Employee A. Therefore, the allowable credit is reduced from \$1,500 to \$500.

- d) In the case of a partnership or subchapter S corporation, the credit passes through to the owners as provided in the partnership agreement under IRC Section 704(a) or in proportion to their ownership of the stock of the subchapter S corporation under IRC Section 1366(a). (See IITA Section 218(b).) The credit earned by a partnership or subchapter S corporation shall be treated as earned by its owners as of the last day of the taxable year of the partnership or subchapter S corporation in which the matching contribution is made, and shall be allowed to the owner in the taxable year of the owner in which the taxable year of the partnership or subchapter S corporation ends.
- e) In no event shall a credit under this Section reduce the taxpayer's liability to less than zero. *If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The tax credit shall be applied to the earliest year for which there is a tax liability. If there are credits for more than one year that are available to offset a liability, the earlier credit shall be applied first.* (IITA Section 218(c))
- f) Documentation of the Credit. A taxpayer claiming the credit allowed under IITA Section 218 and this Section must maintain records sufficient to document the date and amount of each payment made to an individual College Savings Pool account or Illinois Prepaid Tuition Trust Fund account, as well as documentation regarding the contribution the payment matches. (See IITA Section 218(d).) Documentation regarding the

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contribution the payment matches must include the employee's name, the account, and the amount and date of the employee's contribution.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES  
OCCURRING ON OR AFTER DECEMBER 31, 1986

**Section 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for  
Losses Occurring On or After December 31, 1986 (IITA Section 207)**

- a) IITA Section 207(a) provides for carryover deductions of any losses that result *after applying all of the modifications provided for in Section 203(b)(2), (c)(2) and (d)(2) and the allocation and apportionment provisions of Article 3 of the Act.*
- b) Years to Which Illinois Net Losses May be Carried
  - 1) In General. Under IITA Section 207(a)(2), an Illinois net loss incurred in a tax year ending on or after December 31, 1999 and prior to December 31, 2003 may be carried back to the two preceding tax years or carried forward to the 20 succeeding tax years. Under IITA Section 207(a)(3)-(4), for any taxable year ending on or after December 31, 2003 and prior to December 31, 2021, the loss is allowed as a carryover to each of the 12 taxable years following the taxable year of the loss, provided that any such loss not having yet expired as of November 16, 2021, the effective date of Public Act 102-0669, shall be allowed as a carryover to each of the 20 taxable years following the taxable year of the loss. For any taxable year ending on or after December 31, 2021, the loss is allowed as a carryover to each of the 20 taxable years following the taxable year of the loss. For tax years ending prior to December 31, 1999, IITA Section 207(a)(1) provides that a carryback or carryover deduction is allowed in the manner allowed under Internal Revenue Code section 172. The federal rules concerning the years to which a loss may be carried are contained in IRC section 172(b) and in Treas. Reg. Sec. 1.172-4(a)(1). These rules, as now in effect or hereafter amended, are followed for Illinois income tax purposes and apply to corporations, partnerships, trusts and estates. In general, for Illinois net losses

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incurred in tax years beginning prior to August 6, 1997, the net loss is first carried back to the three preceding taxable years and then is carried over to the 15 succeeding taxable years. For Illinois net losses incurred in tax years beginning on or after August 6, 1997 and ending prior to December 31, 1999, the loss generally is first carried back to the two preceding tax years and then is carried forward to the 20 succeeding tax years. In taxable years ending prior to December 31, 1999, special provisions applied to regulated transportation companies, financial institutions, product liability losses and other entities or situations, and the provisions in IRC section 172(b) and the related Treasury Regulations relating to the years to which a loss incurred in one of those years may be carried are followed.

- 2) Specific Rules for Losses Incurred in Taxable Years Ending Prior to December 31, 1999. IITA Section 207(a)(1) provides that, for losses incurred in *any taxable year ending prior to December 31, 1999, the loss is allowed as a carryover or carryback deduction in the manner allowed under IRC section 172*. Pursuant to this provision:
  - A) For losses incurred in taxable years beginning prior to August 6, 1997, a loss generally is first carried back to each of the 3 taxable years preceding the taxable year in which the loss was incurred and then to each of the 15 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(A), as in effect prior to enactment of P.L. 105-34.)
  - B) For losses incurred in taxable years beginning after August 5, 1997, a loss generally is first carried back to each of the 2 taxable years preceding the taxable year in which the loss was incurred and then to each of the 20 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(A), as in effect after enactment of P.L. 105-34.)
  - C) Special carryover periods allowed under IRC section 172(b) for specific kinds of losses or taxpayers also apply. For example:

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- i) "Specified liability losses" may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(C).)
  - ii) For losses incurred in taxable years beginning after December 31, 1986, and ending before January 1, 1994, bad debt losses of commercial banks may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred and to each of the 5 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(D).)
- c) Election to Forgo Carryback Period
  - 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))
  - 2) If the election is made on any combined return filed in accordance with IITA Section 502(e), the election will be considered to be in effect for all eligible members of the combined group filing the return for the taxable year for which the election is made.
  - 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

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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.
- d) 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.* This is illustrated in the following Example.

EXAMPLE: A taxpayer that makes its return on the calendar year basis has an Illinois net loss for 1986. Under the provisions of IRC section 172(b) as in effect in that year, the entire net loss for 1986 may be carried back to 1983. The amount of the carryback to 1984 is the excess of the 1986 loss over the net income for 1983. The amount of the carryback to 1985 is the excess of the 1986 loss over the aggregate of the net incomes for 1983 and 1984. The amount of the carryover to 1987 is the excess of the 1986 loss over the aggregate of the net incomes for 1983, 1984, and 1985, etc.

- e) Carryover of Pre-12/31/86 Losses and Post-12/30/86 Losses. Net operating losses incurred prior to December 31, 1986, can be carried over into years in which Illinois net losses (incurred on or after December 31, 1986) are also carried. In these cases, the losses incurred in tax years ending prior to December 31, 1986 are treated as an adjustment to taxable income (i.e., before apportionment) while the losses incurred in tax years ending after December 30, 1986 are subtracted in computing Illinois net income (i.e., after apportionment). This is illustrated in the following Example.

EXAMPLE: Corporation A is a calendar year taxpayer. It has no partnership income and no nonbusiness income. In 1985, it reported a



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federal net operating loss of \$1,000, and on its Illinois return for 1986, it reported an Illinois net loss of \$50, neither of which could be carried back to prior years due to losses existing in those years. In 1987, A had federal taxable income (before special deductions) of \$200, and Illinois addition modifications of \$100. Corporation A would compute its Illinois net income in 1987 as follows: The \$1,000 net operating loss from 1985 would offset the \$200 of 1987 federal taxable income and would offset the \$100 of 1987 Illinois addition modifications. In 1988, Corporation A would have remaining \$700 of net operating loss carryover from 1985 and \$50 of Illinois net loss carryover from 1986.

f) Special Rules

- 1) IITA Section 207(b) provides that *any loss determined under subsection (a) of this Section is carried back or carried forward in the same manner for purposes of both the regular income tax imposed by IITA Section 201(a) and (b) and the personal property replacement income tax imposed under IITA Section 201(c) and (d).*
- 2) For the carryforward of losses incurred prior to certain corporate or partnership reorganizations or acquisitions, see Section 100.4500.
- 3) IITA Section 207(a) provides that losses that may be carried over and deducted in other years are those losses that result after the modifications of IITA Section 203(b)(2), (c)(2) and (d)(2) are made, and after the allocation and apportionment rules of IITA Article 3 are applied. Accordingly:
  - A) No exemption allowed under IITA Section 204 is taken into account in computing a loss that may be carried over and deducted under IITA Section 207; and
  - B) No deduction for any loss carried over pursuant to IITA Section 207 is taken into account in computing a loss that may be carried to and deducted in another taxable year under IITA Section 207.
- 4) Subchapter S Corporations and Partnerships

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A) IITA Section 207(a) allows the carryover of losses that result after the modifications of IITA Section 203(b)(2) and (d)(2) are made. IITA Section 203(b) applies to subchapter S corporations and IITA Section 203(d) applies to partnerships. Accordingly, IITA Section 207 allows subchapter S corporations and partnerships carryover deductions for losses incurred.

B) Neither IITA Section 207 nor IRC section 172 distinguishes between subchapter S corporations and corporations governed by subchapter C of the Internal Revenue Code. IRC section 1363(b)(2) provides that no net operating deduction allowable under IRC section 172 is allowed in the computation of taxable income of a subchapter S corporation and IRC section 1371(b) prohibits any carryforward or carryback between a taxable year in which a corporation is a subchapter S corporation and a taxable year in which it is not. Neither IRC section 1363 nor IRC section 1371 is applicable to the carryover and deduction of losses under IITA Section 207. Accordingly, subject to the other provisions of this Section, a loss incurred in a taxable year in which a corporation is a subchapter S corporation shall be carried to and deducted in any taxable year in which it is not a subchapter S corporation in the same manner as if the corporation were a subchapter S corporation in that year, and a loss incurred in a taxable year in which a corporation is not a subchapter S corporation may likewise be carried to and deducted in any taxable year in which it is a subchapter S corporation.

EXAMPLE: X Corporation is a subchapter S corporation throughout the calendar year 1998. Effective for 1999, X Corporation's subchapter S election is terminated. In 2000, X Corporation incurs an Illinois loss. Unless X Corporation elects to carry the loss forward only, the loss is first carried back and deducted in 1998 and only the amount of loss in excess of 1998 taxable income is carried to 1999 and subsequent years.

C) Losses carried over pursuant to IITA Section 207 are

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deductible only under that Section, and that Section allows the deduction only of losses that result when the taxpayer's own taxable income is less than zero. Accordingly, no loss carried over and deducted by a partnership or subchapter S corporation in a taxable year may reduce the taxable income of any partner or shareholder of the taxpayer in that taxable year.

- 5) Suspension of Illinois Net Loss Deductions. *In the case of a corporation (other than a subchapter S corporation)*
- A) *no carryover deduction ~~shall be~~ allowed under IITA Section 207 for any taxable year ending after December 31, 2010 and prior to December 31, 2012; ~~and~~*
- B) *no carryover deduction ~~shall~~ exceed \$100,000 for any taxable year ending on or after December 31, 2012 and prior to December 31, 2014, and for any taxable year ending on or after December 31, 2021 and prior to December 31, 2024; ~~and~~*
- C) *no carryover deduction shall exceed \$500,000 for any taxable year ending on or after December 31, 2024 and prior to December 31, 2027,*

*~~For the provided that, for~~ purposes of determining the taxable years to which a net loss may be carried under IITA Section 207(a), any taxable year for which a deduction is disallowed under this subsection (f)(5), or for which the deduction would exceed \$100,000 or \$500,000, as applicable, if not for this subsection (f)(5), is not counted. (IITA Section 207(d))*

EXAMPLE: Pursuant to this subsection (f)(5), in determining the taxable years to which a loss incurred by C Corporation in its taxable year ending December 31, 2009 may be carried:

- A) the taxable year ending December 31, 2011 is not counted even if C Corporation's net income for the year is a negative;

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- B) the taxable year ending December 31, 2012 is not counted if C Corporation's net income (before any net loss deduction) is greater than \$100,000; and
  - C) the taxable year ending December 31, 2012 is counted if C Corporation's net income (before any net loss deduction) is \$100,000 or less or is negative.
- 6) Holders of Residual Interests in Real Estate Mortgage Investment Companies (REMICs)
- A) Under IRC section 860E(a)(1), the taxable income of a holder of a residual interest in a REMIC may not be less than the amount of "excess inclusion" income from the REMIC for that taxable year. If the residual interest holder's federal net income would otherwise be less than the excess inclusion amount, the residual interest holder carries over the excess of its actual federal taxable income over the amount of its federal taxable income computed without regard to IRC section 860E(a)(1) as a net operating loss under IRC section 172.
  - B) IITA Prior to PA 97-507. Under IITA Section 207, the net loss of a taxpayer (other than an individual) for a taxable year is its taxable income for the year, as properly reportable for federal income tax purposes, after modifications in IITA Section 203(b)(2), (c)(2) and (d)(2). Under IITA Section 203(b)(2)(D) and (c)(2)(D), corporations, trusts and estates add back to their taxable income any net operating loss deduction claimed under IRC section 172 for a loss incurred in a taxable year ending on or after December 31, 1986. As a result, a corporation, trust or estate whose excess inclusion amount exceeded its federal taxable income computed without regard to IRC section 860E(a)(1) for a taxable year would receive no tax benefit from the deductions or losses that caused the excess, because those deductions or losses could not reduce its federal taxable income in the year incurred and any resulting IRC section 172 carryover deduction would need to be added back to

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taxable income in the carryover years under IITA Section 203(b)(2)(D) or (c)(2)(D).

- C) In order to allow a corporation the benefit of deductions otherwise disallowed by IRC section 860E(a)(1) and IITA Section 203(b)(2)(D) and (c)(2)(D), PA 97-507 added subsection (e) to IITA Section 207 to allow a residual interest holder an Illinois net loss carryover computed in the same manner as the federal net operating loss carryover allowed under IRC section 860E. IITA Section 207(e) provides that, *in the case of a residual interest holder in a REMIC subject to IRC section 860E, the net loss in IITA Section 207(a) is equal to:*
- i) *the amount computed under IITA Section 207(a), without regard to IITA Section 207(e) or, if that amount is positive, zero;*
  - ii) *minus an amount equal to the amount computed under IITA Section 207(a), without regard to IITA Section 207(e), minus the amount that would be computed under IITA Section 207(a) if the taxpayer's federal taxable income were computed without regard to IRC section 860E and without regard to IITA Section 207(e).*
- D) IITA Section 207(e) applies to all taxable years and is exempt from automatic sunset under IITA Section 250.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)