

General Information Letter: If a federal change for a taxable year is final, it is binding for Illinois income tax purposes even if it has no effect on Illinois income tax except to increase the net loss reportable for the taxable year.

September 16, 2009

Dear:

This is in response to your letter dated July 13, 2009. 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 this letter in response to a Denial Letter sent by the Illinois Department of Revenue regarding our 2001 NOL filing. Per our conversation with the Illinois agent, it has been suggested that we write our appeal to the Legal Department and narrate the sequence of events as to why we believe that we are entitled to the IL NOL adjustment.

As stated to [the Illinois agent], in 2005 the IRS conducted an audit for an adjustment that was made to our 2001 tax return. The same audit was concluded on 12/15/2005 and on 11/28/2005 we already had confirmation that the adjustment of (\$23,807,285) was accepted by the IRS. We then proceed to file our 2004 state tax returns by attaching a statement and notifying all states of the NOL increase as there was no increase in tax liability.

A few of the states did challenge our NOL statement notification but after explaining the sequence of events to the agents and/or supervisors, all of them have granted us the NOL increase as the IRS adjustment only affected the increase of an existing NOL and *not the tax liability* of that year.

"Per Revenue Ruling 82-49, it is important to note that the filing of an amended return to correct the amount of a loss in an earlier year is not mandatory. The carryover loss from year X can be corrected and restated on a return on which the original NOL deduction was claimed."

We respectfully ask that you review our 2001 NOL adjustment and accept our adjustment.

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;

...

(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 may 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.

Under IITA Section 203(e), the starting point in computing the base income of a corporation is the amount of taxable income properly reportable for federal income tax purposes under the Internal Revenue Code. Regarding this section, Department Regulations Section 100.9200(a)(4) states in pertinent part:

[I]t shall be the Department's position and practice to rely upon and accept the federal Internal Revenue Service determination as to the amount of a taxpayer's adjusted gross or taxable income and the number of exemptions to which he is entitled for federal income tax purposes. Adherence to that position shall be subject to exception only in rare circumstances such as where the Internal Revenue Service for some reason (e.g. where no change in federal tax liability would result) might fail or decline to act, or where the 18-month statutory period of limitations for prosecution would expire before action by IRS.

As indicated in your letter, the changes made by the IRS to your 2001 federal income tax return were finalized on December 15, 2005. You filed an amended Illinois income tax return for your 2001 taxable year on March 30, 2009 to report an increase to your Illinois net loss resulting from the changes made to your 2001 federal tax return. It does not appear that you filed amended Illinois returns for any other taxable years as a result of the changes made to your 2001 federal return.

Based on the information provided, it does not appear that your case involves the sort of rare circumstances that would cause the Department not to accept the federal adjustments made to your 2001 federal taxable income. Therefore, the increase in your federal net operating loss for that year as determined by the IRS audit will be respected as the starting point in computing your Illinois base income. There is no need to file a protest in response to the Department's LTR-353 Notice of Claim Status, since your 2001 amended Illinois income tax return is not a claim for refund. Your protest rights are set forth in IITA Sections 908 and 910, and generally do not arise until you have received a notice of deficiency or notice of claim denial.

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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 further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's website at www.iltax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)