

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 100 Section 100.9320 Limitations on Notices of Deficiency (IITA Section 905)</b>
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**Section 100.9320 Limitations on Notices of Deficiency (IITA Section 905)**

- a) In General
  - 1) Except as otherwise provided in this Section, no notice of deficiency for a taxable year may be issued later than 3 years after the date the return for that taxable year was filed or deemed filed under subsection (h) (see IITA Section 905(a)).
  - 2) Consequences of Failure to Issue a Timely Notice of Deficiency. Failure by the Department to issue a timely notice of deficiency with respect to a taxable year precludes assessment of any additional tax for that taxable year, together with any related penalty or interest, that is required to be shown in a notice of deficiency. The expiration of the period for issuing a notice of deficiency for a taxable year:
    - A) does not preclude the Department from asserting any adjustments to net income or credits reported by a taxpayer, to the extent the adjustments would reduce or eliminate a refund claimed by the taxpayer for that taxable year. (See *Lewis v. Reynolds*, 284 U.S. 281 (1932).)
    - B) does not preclude the Department from asserting any adjustments to the amount of net loss incurred under IITA Section 207 (except as provided in subsection (l) of this Section for losses incurred in taxable years ending prior to December 31, 2002) or of any credit earned in that taxable year, or the amount of net loss deduction under IITA Section 207 or of any credit carryforward that is properly taken in that taxable year, in order to compute the amount of net loss deduction or credit carryforward allowable in another taxable year, so that a timely notice of deficiency may be issued for that other taxable year or a claim for refund for that other taxable year may be denied in whole or in part. (*Springfield Street Railway Co. v. U.S.*, 312 F.2d 754 (Ct. Cl. 1963).)

EXAMPLE:

Corporation A and its wholly-owned subsidiary Corporation B are members of a unitary business group, but filed separate returns for calendar years 2005 through 2009. Corporation A reported positive net income every year, and Corporation B reported net losses under IITA Section 207 for every year. For 2010, the corporations filed a combined return, and used losses incurred by Corporation B in 2010 and carryforwards of losses reported by Corporation B in prior years to reduce combined net income to zero. The corporations also filed refund claims for 2007, 2008 and 2009, computing their liability on a combined basis, and reporting net losses carried to 2010. The limitations periods for issuing notices of deficiency have expired for 2005 and 2006, but not for the later years.

The Department may examine the returns for 2005 and 2006 and may adjust the combined net income or loss of the corporations for those years and for each subsequent year in order to determine the correct amount of any combined net income or loss for each year, and the correct amount of any net loss deduction to be used in each year, so that the correct liabilities for 2007, 2008, 2009 and 2010 can be determined and any deficiency for the later years can be assessed and any excessive refund claim denied.

If the limitations period for issuing a notice of deficiency for 2007 expires before the Department begins its examination of the corporations' returns, but before any refund is paid, the Department may nevertheless make any adjustment to the net income or net loss of either corporation for 2007, as well as to any net loss carryforwards from 2005 and 2006, in order to reduce the allowable refund for that year or to reduce the net losses available to carry to subsequent years.

- b) Omission of More than 25% of Base Income
- 1) *If a taxpayer omits from base income an amount in excess of 25% of the amount of base income stated in the return, a notice of deficiency may be issued at any time not later than 6 years after the date the return was filed or deemed filed. There shall not be taken into account as an amount omitted from base income any amount disclosed in the return or in a statement attached thereto in a manner adequate to apprise the Department of its nature. (IITA Section 905(b)(1))*
  - 2) *If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a reportable transaction, as required under IITA Section 501(b), a notice of*

*deficiency may be issued not later than 6 years after the return is filed or deemed filed with respect to the taxable year in which the taxpayer participated in the reportable transaction, provided that any such notice of deficiency shall be limited to the amount of deficiency resulting under the Act from any correction to the items required to be reported. (IITA Section 905(b)(2))*

3) See subsection (h) regarding when a return is deemed filed.

c) No Return or Fraudulent Return

1) *If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by the IITA, a notice of deficiency may be issued at any time. (IITA Section 905(c))* However, if the taxpayer had reasonable cause for failing to file a return, a notice of deficiency may be issued no later than 6 years after the date the return was due, including any extensions or automatic extensions of time to file (see UPIA Section 3-10(b)). The issuance of a notice of deficiency does not cause the running of any limitations period to begin. If a fraudulent return is filed, the subsequent filing of a nonfraudulent amended return does not cause the running of any limitations period to begin. (See *Badaracco v. Commissioner*, 464 U.S. 386 (1984).)

2) *For purposes of this subsection (c), any taxpayer who is required to join in the filing of a combined return under the provisions of IITA Section 502(e) for a taxable year ending on or after December 31, 2013 and who is not included on that return and does not file its own return for that taxable year shall be deemed to have failed to file a return; provided that the amount of any proposed assessment set forth in a notice of deficiency issued under this subsection (c) shall be limited to the amount of any increase in liability under the IITA that should have been reported on the combined return for that taxable year resulting from proper inclusion of that taxpayer on that combined return (IITA Section 905(c)).* For purposes of this subsection (c)(2), a taxpayer is included on a combined return under IITA Section 502(e) if it is identified on that return and its base income and apportionment factors are reported on that return under Section 100.5270(b)(1) as those of a member of the unitary business group that has no nexus with this State.

d) Failure to Report Federal Change

If a taxpayer fails to notify the Department of an alteration or change as required by IITA Section 506(b), a notice of deficiency may be issued at any time. The assessment proposed in any such notice of deficiency shall be limited to the amount of deficiency resulting under the IITA from

recomputing the taxpayer's net income, net loss, or Article 2 credits for the taxable year by giving effect to the item or items subject to the notification requirements. (See IITA Section 905(d).) The statute of limitations for issuing a notice of deficiency under this subsection (d) applies to a federal change for a taxable year, even if the federal change is made after the statute of limitations has expired for assessing a federal income tax deficiency for that taxable year. (See *Peoria and Pekin Union Railway Co. v. IDOR*, 301 Ill.App.3d 736 (1999).)

e) Report of Federal Change

In any case in which a taxpayer has given notification to the Department of an alteration or change as required by IITA Section 506(b), the Department, not later than 2 years after the date the notification is received, may issue a notice of deficiency proposing assessment limited to the amount of deficiency resulting under the IITA from recomputing the taxpayer's net income, net loss, or Article 2 credits for the taxable year for which the notification is required or for any year for which the amount of net loss or credit carryovers is affected by the recomputations for that year. The deficiency that may be assessed under this provision is limited to the changes in liability that result from giving effect to the item or items subject to the notification requirements. (See IITA Section 905(e).) The statute of limitations for issuing a notice of deficiency under this subsection (e) applies to a federal change for a taxable year, even if the federal change is made after the statute of limitations has expired for assessing a federal income tax deficiency for that taxable year. (See *Peoria and Pekin Union Railway Co. v. IDOR*, 301 Ill.App.3d 736 (1999).)

f) Extension by Agreement

1) When, before expiration of the time otherwise prescribed in this Section for issuance of a notice of deficiency pertinent to a return or returns for one or more taxable years, the Department has obtained the taxpayer's written consent to issuance after such time, a notice of deficiency for any or all of those years may be issued at any time prior to the expiration of the extended period agreed upon. After proper execution and submission by the taxpayer of an agreement to extend the statute of limitations, the consent will become effective upon acceptance and authorized execution on behalf of the Department.

2) *In the case of a taxpayer who is a partnership, Subchapter S corporation, or trust and who enters into an agreement with the Department pursuant to this subsection (f) on or after January 1, 2003, a notice of deficiency may be issued to the partners, shareholders, or beneficiaries of the taxpayer at any time prior to the expiration of the period agreed upon. Any proposed*

*assessment set forth in the notice under this subsection (f)(2) shall be limited to the amount of any deficiency resulting under the IITA from recomputation of items of income, deduction, credits, or other amounts of the taxpayer that are taken into account by the partner, shareholder, or beneficiary in computing its liability under the IITA. (IITA Section 905(f))*

- 3) Prior to the expiration of any extended period under this subsection (f), the period may be successively further extended for any or all of the taxable years covered by the extension agreement by obtaining a further written consent.

g) **Erroneous Refunds**

*In any case in which tax payable under the IITA has been erroneously refunded, a notice of deficiency not to exceed the amount so refunded may be issued within 2 years from the date of the refund, or within 5 years therefrom if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact. Beginning July 1, 1993, in any case in which there has been a refund of tax payable under the IITA attributable to a net loss carryback as provided for in Section 207, and that refund is subsequently determined to be an erroneous refund due to a reduction in the amount of the net loss which was reported for the loss year, a notice of deficiency for the erroneous refund amount may be issued at any time during the same period in which a notice of deficiency can be issued for the loss year under this subsection (g). The amount of any proposed assessment set forth in the notice shall be limited to the amount of such erroneous refund. (IITA Section 905(g))*

h) **Time Return Deemed Filed**

*For purposes of this Section, a return filed before the last day prescribed by law (including any extensions of time for filing) shall be deemed to have been filed on such last day. (IITA Section 905(h))* The last day prescribed for filing returns shall include any automatic extensions of time for filing, regardless of whether the taxpayer filed the return prior to the unextended due date.

i) **Request for Prompt Determination of Liability**

1) **In General**

In the case of a tax return required under the IITA in respect of a decedent, or by his or her estate during the period of administration or by a corporation meeting the conditions stated in subsection (i)(3), in lieu of the 3-year limitations period in IITA Section 905(a)(1) that ends 3 years after the date the return was filed, that period if earlier shall end 18 months after the filing with the Department of three executed copies of a written request for

prompt determination of liability by the executor, administrator, or other fiduciary representing the decedent's estate or by an officer authorized to act for the corporation or by the fiduciary provided if required under IITA Section 502(b)(4).

- 2) **Purpose; Evidence of Authority to Act**  
The written request to be effective must be transmitted separately from and after the filing of the return and in a manner sufficient to put the Director of Revenue on notice of the request for prompt determination of liability. The shortened limitations period does not apply if more than 25% of base income is omitted from the return or in case of a false or fraudulent return or where no return has been filed (see subsections (b) and (c)). If not previously filed with the Department, there should be furnished with the written request in respect of a decedent copies of Letters Testamentary or of Administration, properly certified true and in full force and effect within 3 months of the day submitted. In the case of a corporation, consistent with the provisions of IITA Section 503(a) and (b), the signature (with title) of the president, vice-president, or treasurer shall be prima facie evidence of that person's authority.

- 3) **Corporate Intent and Undertaking to Dissolve**  
For application of this subsection (i) in case of a corporation, the written request must notify the Department, as of the date of the request:

- A) that the corporation contemplates dissolution at or before the expiration of the limitations period of 18 months (or less as the case may be), in which case the dissolution (for example, the proceedings required by applicable State law after the filing of an intent to dissolve) must in good faith be undertaken within and the dissolution must be completed (under the State law requirements) by the termination of the limitations period;
- B) that a dissolution has in good faith begun, if it has so commenced (the dissolution must be completed by the termination of the limitations period); or
- C) that the dissolution is completed, if it is complete.

j) **Withholding Tax**

- 1) *In the case of returns required under Article 7 of the IITA relating to amounts withheld, or required to have been withheld, as tax a notice of deficiency may be issued at any time not later than 3*

*years after the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the calendar year in which such withholding was required. (IITA Section 905(j))*

- 2) *For any period beginning on or after January 1, 2013, if an employer fails to report on a return an amount required to be withheld and to be reported on that return which is in excess of 25% of the total amount of withholding required to be reported on that return, a notice of deficiency may be issued not later than 6 years after the return was filed. (IITA Section 905(b)(3))*

k) *Transferee Liability*

*A notice of deficiency may be issued to a transferee relative to a liability asserted under IITA Section 1405 during the following time periods:*

- 1) *In the case of the liability of an initial transferee, up to 2 years after the expiration of the period of limitation for assessment against the transferor, except that if a court proceeding for review of the assessment against the transferor has begun, then up to 2 years after the return of the certified copy of the judgment in the court proceeding. (IITA Section 905(m)(1))*
- 2) *In the case of the liability of a subsequent transferee, up to 2 years after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor; except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, as the case may be, then the period of limitation for assessment of the liability of the transferee shall expire 2 years after the return of the certified copy of the judgment in the court proceeding. (IITA Section 905(m)(2))*

- l) *Net Losses. On and after August 23, 2002, no notice of deficiency shall be issued as the result of a decrease determined by the Department in the net loss incurred by a taxpayer in any taxable year ending prior to December 31, 2002 under IITA Section 207 unless the Department has notified the taxpayer of the proposed decrease within 3 years after the return reporting the loss was filed or within one year after an amended return reporting an increase in the loss was filed, provided that in the case of an amended return, a decrease proposed by the Department more than 3 years after the original return was filed may not exceed the increase claimed by the taxpayer on the amended return. (IITA Section 905(n))*

- 1) This subsection (l) applies only to net losses incurred in taxable years ending prior to December 31, 2002.
- 2) This subsection (l) does not preclude the Department from decreasing a net loss reported by a taxpayer in order to deny some or all of a refund claimed by a taxpayer as the result of claiming a carryforward deduction of that net loss.
- 3) This subsection (l) does not preclude the Department from adjusting the net income of the taxpayer (before net loss deductions) for any year to which a net loss is carried in order to issue a notice of deficiency for that year or reduce the amount of net loss remaining available to carry to subsequent years, so that a notice of deficiency may be issued for one or more subsequent years.

(Source: Amended at 40 Ill. Reg. 10925, effective September 29, 2016)