

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 100 Section 100.2310 Section 100.2310 Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)</b>
---

**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.2310 Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)**

- a) The amount of the Illinois net loss deduction allowed by IITA Section 207 for any taxable year is the aggregate of the Illinois net loss carryovers and Illinois net loss carrybacks to that taxable year. The steps to be taken in determining the amount of the deduction are as follows:
  - 1) Compute the Illinois net loss in accordance with Section 100.2320 (adjusted as may be required under subsection (c) of this Section) for any preceding or succeeding taxable year from which a net loss may be carried.
  - 2) Compute the Illinois net loss carryovers and carrybacks from the preceding or succeeding taxable years in accordance with Section 100.2330 (adjusted as may be required under subsection (c) of this Section).
  - 3) Add the Illinois net loss carryovers and carrybacks.
- b) Every taxpayer claiming an Illinois net loss deduction for any taxable year shall file, in accordance with the tax return instructions for that year, a concise statement in such form as the Department shall require setting forth the amount of the net loss deduction claimed and all material and pertinent facts required by the instructions. The Illinois net loss for any taxable year shall be determined under the law applicable to that year.
- c) **Adjustment in the Case of Discharge of Indebtedness Income.** Under IRC section 108(a), income from discharge of indebtedness may be excluded from gross income in certain circumstances. When discharge of indebtedness income is excluded under this provision, IRC section 108(b) requires the taxpayer to reduce certain "tax attributes", including net operating losses incurred in the year of the discharge or carried over to that year, basis in assets, and net capital losses incurred in the year of discharge or carried over to that year. These reductions generally have the effect of including the discharge of indebtedness income in gross income at some later time. This effective inclusion of the discharge of indebtedness income in gross income automatically causes the discharge of indebtedness income to be included in base income, except in the case of reductions in net operating losses incurred in taxable years ending on or after December 31, 1986, by taxpayers other than individuals. In those cases, the taxpayer would never include the discharge of indebtedness income in its base income because the IITA did not allow deduction of federal net operating losses, but instead provided for

computation and carryover of Illinois net losses under IITA Section 207 and, prior to the enactment of Public Act 95-0233, that Section had no provision for reduction of net losses when a taxpayer had discharge of indebtedness income. IITA Section 207(c) provides that a taxpayer required to reduce a federal net operating loss or federal net operating loss carryover under IRC section 108(b)(2)(A), on account of discharge of indebtedness income excluded from gross income under IRC section 108(a) with respect to a taxable year ending on or after December 31, 2008, must reduce its Illinois net loss incurred in the year of the discharge or any Illinois net losses carried over to that year, to the extent provided in this subsection.

- 1) Amount of Reduction
  - A) Illinois Net Loss. A taxpayer must reduce any Illinois net loss incurred in a taxable year under Section 100.2320 by an amount equal to the amount of the reduction to the taxpayer's federal net operating loss under IRC section 108(b)(2)(A) for the same taxable year that is allocable to Illinois.
  - B) Illinois Net Loss Carryover. A taxpayer must reduce any Illinois net loss carryover to a taxable year under Section 100.2330 by an amount equal to the amount of the reduction to the taxpayer's federal net operating loss carryover under IRC section 108(b)(2)(A) for the same taxable year that is allocable to Illinois.
  - C) The Illinois net losses or net loss carryovers may not be reduced below zero.
- 2) Attribute Reduction Allocable to Illinois. For purposes of subsection (c)(1), the portion of the reduction to a federal net operating loss or federal net operating loss carryover allocable to Illinois shall be determined by multiplying the reduction required to that loss or loss carryover under IRC section 108(b)(2)(A) by a fraction, the numerator of which is the amount of income excluded from gross income for the taxable year under IRC section 108(a) that would have been allocated to Illinois and the denominator of which is the total income excluded from gross income under IRC section 108(a) for the taxable year. The amount of income excluded from gross income under IRC section 108(a) that would have been allocated to Illinois shall be determined by applying the provisions of Article 3 of the IITA as if that income had not been excluded from gross income.
- 3) Ordering Rules
  - A) Reduction Required after Determination of Tax. The reduction required under this subsection (c) shall be made after the determination of the tax imposed under the IITA for the taxable year of the discharge. Accordingly, any Illinois net loss carryover available for the taxable year in which income is excluded under IRC section 108(a) is taken into account in computing the Illinois net loss deduction for that taxable year under subsection (a), and only the amount of the loss remaining to carry forward to the next taxable year, if any, is reduced under this subsection (c).
  - B) Any reduction required under this subsection (c) to Illinois net loss carryovers shall be made first to the net loss carryover whose carryforward period will expire first, then to the carryover that will expire

next, and so forth, until the entire reduction is made or until all carryforwards are reduced to zero.

- 4) Partnerships and Subchapter S Corporations. Under IRC section 108(d)(6), the provisions of IRC section 108(a), (b), (c) and (g) are applied at the partner level. Accordingly, a partnership does not exclude discharge of indebtedness income and is not required to make any reduction under this subsection (c). Under IRC section 108(d)(7), the provisions of IRC section 108(a), (b), (c) and (g) are applied at the corporate level in the case of a Subchapter S corporation, including by treating any loss or deduction that is disallowed for the taxable year of the discharge under IRC section 1366(d)(1) as a net operating loss for that taxable year. Accordingly, a Subchapter S corporation may be required to make a reduction under this subsection (c).
- 5) Examples. The provisions of this subsection may be illustrated by the following examples.
  - A) EXAMPLE 1. For its taxable year ending December 31, 2008, Taxpayer has \$50,000 of discharge of indebtedness income excluded from gross income under IRC section 108(a). Under Article 3 of the IITA, but for the exclusion the entire \$50,000 would have been included in the Taxpayer's business income and a total of \$10,000 of the income would have been apportioned to Illinois. The Taxpayer has a federal net operating loss of \$40,000 for its December 31, 2008 taxable year, and an Illinois net loss of \$8,000. Under IRC section 108(b)(2)(A), Taxpayer is required to reduce its federal net operating loss from \$40,000 to \$0. Under this subsection, Taxpayer is required to reduce its Illinois net loss from \$8,000 to \$0 ( $\$8,000 - [\$40,000 \times (\$10,000/\$50,000)]$ ).
  - B) EXAMPLE 2. Assume the same facts as Example 1, except that the Taxpayer makes an election under IRC section 108(b)(5) to reduce its basis in depreciable property, with the result that no reduction is made to the taxpayer's federal net operating loss. No reduction is required under this subsection (c) to the Taxpayer's Illinois net loss.
  - C) EXAMPLE 3. For its taxable year ending December 31, 2009, Taxpayer has \$200,000 of discharge of indebtedness income excluded from gross income under IRC section 108(a). Under Article 3 of the IITA, but for the exclusion the entire \$200,000 would have been included in the Taxpayer's business income and a total of \$100,000 of that income would have been apportioned to Illinois. The Taxpayer has \$50,000 of federal taxable income for its December 31, 2009 taxable year before application of a federal net operating loss carryover in the amount of \$75,000 from its December 31, 2006 taxable year, leaving \$25,000 of that loss to carry forward to 2010. In addition, the Taxpayer has an Illinois net loss for its December 31, 2009 taxable year of \$10,000, but no Illinois net loss carryovers to that year. Under IRC section 108(b)(4)(A) and (b)(2)(A), the Taxpayer is required to reduce its 2006 federal net operating loss remaining to carry forward to 2010 from \$25,000 to \$0. Since no reduction is made to a federal net operating loss incurred in 2009 under IRC section 108(b)(2)(A), no reduction is required to be made to the Taxpayer's 2009 Illinois net loss under this subsection (c).

- D) EXAMPLE 4. Assume the same facts as in Example 3, except that the Taxpayer has \$25,000 of Illinois net income for its December 31, 2009 taxable year and has Illinois net loss carryovers of \$20,000 from its December 31, 2007 taxable year and \$20,000 from its December 31, 2008 taxable year. Under subsection (c)(3)(B), the \$20,000 Illinois net loss carryover from 2007 and \$5,000 of the 2008 Illinois net loss carryover are first applied to reduce Taxpayer's Illinois net income to \$0 for its December 31, 2009 taxable year. The remaining \$15,000 Illinois net loss carryover from 2008 is reduced under this subsection to \$2,500 ( $\$15,000 - [\$25,000 \times (\$100,000/\$200,000)]$ ). Reduction is required even though the Taxpayer's federal net operating loss carryover relates to its December 31, 2006 taxable year while the Illinois net loss carryover is from Taxpayer's December 31, 2008 taxable year.
- E) EXAMPLE 5. For its taxable year ending December 31, 2009, Taxpayer has \$200,000 of discharge of indebtedness income excluded from gross income under IRC section 108(a). Under Article 3 of the IITA, but for the exclusion the entire \$200,000 would have been included in the Taxpayer's business income and a total of \$100,000 of that income would have been apportioned to Illinois. The Taxpayer has a \$50,000 federal net operating loss for the 2009 taxable year and federal net operating loss carryovers of \$25,000 from its December 31, 2006 taxable year and \$75,000 from its December 31, 2007 taxable year. Taxpayer has an Illinois net loss of \$25,000 for its December 31, 2009 taxable year, and Illinois net loss carryovers of \$6,000 from its December 31, 2006 taxable year and \$30,000 from its December 31, 2007 taxable year. Under IRC section 108(b)(2)(A), Taxpayer's \$50,000 federal net operating loss for 2009 and \$25,000 net operating loss carryover from 2006 are each reduced to \$0. In addition, the \$75,000 net operating loss carryover from 2007 is reduced to \$50,000. Under this subsection, the Taxpayer's Illinois net loss is reduced to \$0 ( $\$25,000 - [\$50,000 \times (\$100,000/\$200,000)]$ ). In addition, the Taxpayer's Illinois net loss carryover from 2006 is reduced to \$0, and its Illinois net loss carryover from 2007 is reduced to \$11,000. Under subsection (c)(3)(B), the \$25,000 reduction to the Taxpayer's Illinois net loss carryover is first applied to reduce the carryover from 2006 from \$6,000 to \$0, and the remaining reduction is applied to reduce the carryover from 2007 from \$30,000 to \$11,000.

(Source: Amended at 33 Ill. Reg. 1195, effective December 31, 2008)