

IT 11-0011-GIL 06/27/2011 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter: The prohibition against double deductions in IITA Section 203(g) precludes a taxpayer from claiming a subtraction for repayment of Social Security payments that were excluded from base income in the year received.

June 27, 2011

Dear:

This is in response to your letter dated June 16, 2011 in which you request information regarding Illinois income tax. 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](http://www.iltax.com).

Your letter states as follows:

We recently contacted the Illinois Department of Revenue through the IDOR website with a question regarding the deduction for restoration of amounts held under claim of right. The individuals providing assistance on two separate occasions gave answers that did not actually address our question, so we are turning to the Office of the General Counsel for guidance.

In this situation, a taxpayer has been receiving Social Security for the last several years which was included in his federal AGI at the rate of 85% based on his other income. He has been an Illinois resident for all years in question, therefore the federally taxable Social Security income was included in Line 1 of his Illinois income tax return and then subtracted on Line 5 along with other federally taxed retirement income. As such, although the Social Security income was indeed included in federal taxable income, it was not subject to Illinois income tax.

In 2010, the taxpayer repaid all of his previously received Social Security benefits. Under I.R.C. §1341, a credit was claimed on his 2010 federal tax return for an amount equal to the amount of tax paid in previous years on the repaid Social Security. In this case, the credit resulted in a lower tax liability than a deduction, therefore the credit was claimed as required by I.R.C. §1341.

The instructions for Illinois Schedule M Line 14 state "write the amount equal to the deduction used to compute the federal tax credit for restoration of amounts held under claim of right under Internal Revenue Code Section 1341." The Department's forms and instructions have the force and effect of regulations pursuant to section 1501(a)(19), and, like other regulations promulgated by the Department, have the force and effect of law. Following these instructions, it appears the taxpayer is entitled to a deduction equal to the amount of taxable Social Security repaid in 2010, which is the amount of the deduction used to calculate the federal credit. Because this federally taxable income was never included in Illinois taxable income, we are questioning whether this deduction is actually allowed.

**RULING**

Section 203(a)(2)(L) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/203(a)(2)(L)) allows a

subtraction modification for social security benefits:

For taxable years ending after December 31, 1983, an amount equal to all social security benefits and railroad retirement benefits included in such total pursuant to Sections 72(r) and 86 of the Internal Revenue Code.

IITA Section 203(a)(2)(P) allows a subtraction modification where the taxpayer has claimed the federal credit under Internal Revenue Code Section 1341:

An amount equal to the amount of the deduction used to compute the federal income tax credit for restoration of substantial amounts held under claim of right for the taxable year pursuant to Section 1341 of the Internal Revenue Code of 1986.

IITA Section 203(g) states:

Unless specifically provided otherwise, nothing in this Section shall permit the same item to be deducted more than once.

In addition, Department Regulations § 100.2405(f) states:

Double deductions prohibited. No item of deduction may be taken into account twice in the calculation of Illinois base income unless specifically authorized under the IITA. If a subtraction modification applies to an item that is already excluded or deducted in computing adjusted gross income or federal taxable income, or to which another subtraction applies, it will be disallowed.

In this case, because the taxpayer was allowed a subtraction modification under IITA Section 203(a)(2)(L) for social security benefits for the taxable years those benefits were included in federal AGI, IITA Section 203(g) and Regulations § 100.2405(f) prohibits another subtraction of the same amounts upon repayment in 2010. Therefore, the taxpayer in the circumstances described in your letter is not allowed the subtraction modification otherwise allowable under IITA Section 203(a)(2)(P) for restoration of substantial amounts held under claim of right.

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 questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
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