

IT 12-0006-GIL 03/14/2012 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter: Taxpayer is not allowed a subtraction from federal taxable income to exclude that portion of a gain recognized on the disposition of an asset that resulted from basis reductions attributable to losses that the taxpayer was unable to use to reduce net income in any year.

March 14, 2012

Dear:

This is in response to your letters dated November 19, 2010, and December 17, 2010. The nature of your request and the information you have provided require that we respond with a General Information Letter, which 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 found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter dated November 19, 2010, you have stated the following:

It appears from the enclosed that you have different net operating loss carry forward amounts than as set forth on the 2008 income tax return for the above-noted entity. We are in the process of obtaining copies of all tax returns filed from inception to determine the appropriate net operating loss carry forward.

If, in fact, there is a modification of the loss carry forward allowed for gain purposes, there would also be a modification of the gain as reported.

In your letter dated December 17, 2010, you have stated the following:

I have analyzed your NOL carry forward schedule and noted that you disallowed the losses from 1986 through 1992 totaling \$1,006,194. All losses from prior years were part of the phantom gain reported in 2008. The amount of proceeds received on sale were insufficient to recover the taxpayer's investment, and the gain was primarily attributed to a negative capital account caused by prior deductible losses. If these losses are disallowed, then there should be an adjustment in the basis of the gain.

## **Response**

Under Section 203 of the Illinois Income Tax Act (35 ILCS 5/203), the computation of a taxpayer's "net income" taxed by Illinois begins with the taxpayer's federal taxable income, as properly computed for the taxable year. Various addition and subtraction modifications are then made, and the resulting "base income" is then allocated and apportioned to Illinois. Section 203(h) provides that no modification may be made to taxable income unless expressly provided in Section 203. There is no provision in Section 203 that would allow the "adjustment to basis" you request or any equivalent modification to the taxpayer's federal taxable income.

Section 207(a) of the Illinois Income Tax Act (35 ILCS 5/207) provides:

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;

(1) for any taxable year ending prior to December 31, 1999, such loss shall be allowed as a carryover or carryback deduction in the manner allowed under Section 172 of the Internal Revenue Code;

(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; and

(3) for any taxable year ending on or after December 31, 2003, such loss shall be allowed as a net operating loss carryover to each of the 12 taxable years following the taxable year of such loss.

Under this Section 172(b)(2)(a)(ii) of the Internal Revenue Code as in effect prior to amendment by Public Law 105-34, losses incurred in taxable years beginning prior to August 6, 1997, could be carried forward no more than 15 years. Accordingly, losses incurred in taxable years ending on or before December 31, 1992, cannot be carried to taxable years ending on or after December 31, 2008.

Accordingly, based on the facts you have presented, the Department's computation of the taxpayer's net income before net loss deduction and the computation of the net loss deduction for the year in question were both correct.

As stated above, this is a general information letter which 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 are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel – Income Tax