

IT 13-0011 GIL 10/21/2013 Deficiencies

In the case of a return filed before the due date for filing, a notice of deficiency may be issued at any time prior to the date that is 3 years after the due date for filing, taking into account the automatic extension granted to all taxpayers under 86 Ill. Adm. Code Section 100.5020(b).

October 21, 2013

Re: COMPANY A
2009 Illinois Replacement Tax Return

Dear Xxxxx:

This is in response to your letter dated September 11, 2013, in which you request a letter ruling. 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 you have stated the following:

After discussing the attached proposed assessment with Revenue Agent Xxxx Xxxx, they suggested we write the Legal Department after they conferred with their boss. Here is the issue. COMPANY A (XX-XXXXXXX) filed their 2009 partnership return prior to the due date of 4-15-XX. No extension was requested. The statute of limitations for this year should have expired on 4-15-XX. Your notice was sent 8-26-XX. Please refer to Illinois Code Sec. 905(h)

Secondly, Code Sec. 905(a)(2) states that no deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period. The period being three years from the date of filing or if extended three years from the extended due date (9-15-13). No deficiency has been assessed and we are past both dates.

We ask that the proposed notice of tax due be withdrawn.

Response

Section 905(a) of the Illinois Income Tax Act (35 ILCS 5/905) provides:

Except as otherwise provided in this Act:

- (1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed, and
- (2) No deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period.

Section 905(h) of the Illinois Income Tax Act provides:

For purposes of this Section a tax return filed before the last day prescribed by law (including any extension thereof) shall be deemed to have been filed on such last day.

86 Ill. Adm. Code Section 100.5020(b) provides:

The Department will grant an automatic extension of 6 months (7 months for corporations) to file any Illinois income tax return except returns due under Article 7 of the IITA. No application form need be filed by a taxpayer to obtain this extension. If a balance of tentative tax is due, the taxpayer should transmit the payment with the appropriate form by the original filing due date in order to avoid the penalty for underpayment of tax (IITA Section 1005) and statutory interest (IITA Section 1003).

86 Ill. Adm. Code Section 100.9320(h) provides:

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. The last day prescribed for filing returns shall include any automatic extensions of time for filing.

Under these provisions, a notice of deficiency issued prior to October 15, 2013, would be timely for a 2009 calendar year partnership. It is my understanding that a notice of deficiency was issued prior to that date, and the deficiency shown in that notice may be assessed and collected.

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