

No Modifications are Allowed except as Expressly Provided. (This is a GIL).

August 19, 2020

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter dated June 3, 2020, in which you request a letter ruling regarding Illinois income tax law. 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.

Your letter states as follows:

I am writing on behalf of taxpayer COMPANY. in regards to a disallowed Schedule M subtraction on their 20XX tax return. A copy of my Power of Attorney is attached.

The taxpayer received a notice dated DATE (copy enclosed) indicating their 20XX Schedule M subtraction of \$\$\$ was disallowed and tax was due plus interest and penalty. I have enclosed the taxpayer's response to this notice which was submitted on DATE.

The taxpayer then received a notice dated DATE (copy enclosed) denying the request to allow the subtraction. I contacted the agent listed on the notice and after discussing the case EMPLOYEE suggested filing an amended return. She suggested filing and reporting federal taxable income without the positive income adjustment which necessitated the subtraction on the Illinois return. I have attached a copy of the amended return which was submitted on DATE.

The taxpayer then received a notice dated DATE requesting proof of federal finalization in order to process the amended return. Since no federal amendment was filed and therefore no proof of finalization available, I contacted the agent listed on the notice, however, EMPLOYEE 1 was unable to help resolve the issue. I requested to be contacted by a manager in order to discuss the case.

Agent EMPLOYEE 3 contacted me on DATE. I explained that there isn't a "correct" form to subtract the federal addition which should not apply to Illinois. She suggested contacting the Board of Appeals or the Legal Services Office.

I am requesting for the case to be reviewed and the subtraction on Schedule M to be allowed. This would be an equitable result as the positive adjustment on the federal return should not apply to Illinois but there is no prescribed Illinois form to take the subtraction.

RULING

As explained below, the Department properly disallowed the taxpayer's claimed subtraction modification.

Section 201 of the Illinois Income Tax Act ("IITA") (35 ILCS 5/201) imposes a tax measured by net income on every individual, corporation, trust and estate, for each taxable year ending after July 31, 1969. Section 202 of the IITA defines "net income" for a taxable year as that portion of the taxpayer's base income for such year which is allocable to Illinois under the provisions of Article 3 of the IITA, less the standard deduction allowed under Section 204 and the net loss deduction allowed under Section 207.

Section 203(b)(1) of the IITA defines "base income" in the case of a corporation as an amount equal to the taxpayer's taxable income as modified under Section 203(b)(2). Section 203(e) defines "taxable income" as the amount of taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code.

Section 203(h) of the IITA states as follows:

Except as expressly provided by this Section there shall be no modifications or limitations on the amount of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income, or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year, whether in respect of property values as of August 1, 1969 or otherwise.

Treasury Regulations §1.965-7(e)(1)(i) provides, in relevant part:

If the section 965(n) election creates or increases a net operating loss under section 172 for the taxable year, then the taxable income of the person for the taxable year cannot be less than the amount described in paragraph (e)(1)(ii) of this section. The amount of deductions equal to the amount by which a net operating loss is created or increased for the taxable year by reason of the section 965(n) election (the deferred amount) is not taken into account in computing taxable income.

In this case, the taxpayer's taxable income cannot be less than the amount described in paragraph (e)(1)(ii) of Treasury Regulations §1.965-7(e)(1)(i). Accordingly, under IITA Section 203(e), the same taxable income applies for purposes of computing Illinois base income. Likewise, the taxpayer's deferred amount of \$3,236,949, which is not allowed in computing federal taxable income pursuant to Treasury Regulations §1.965-7(e)(1)(i), is not allowed in computing Illinois base income. IITA Section 203 does not provide for a subtraction modification for deductions disallowed for the taxable year by reason of a section 965(n) election.¹ Therefore, under IITA Section 203(h), no such subtraction modification is allowed.

¹ Compare IITA Section 203(b)(2)(Z).

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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.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)