

General Information Letter: No subtraction is allowed for LIFO recapture amounts included in taxable income of a corporation, even if some of the tax on the recapture amount is deferred until later years for federal purposes.

April 14, 2009

Dear:

This is in response to your letter dated March 20, 2009 in which you state the following:

I have been in communication with Ms. Z, Revenue Tax Specialist with the Business Processing Division of the Illinois Department of Revenue recently regarding a Notice of Tax Due. The issue at hand results from a deferral of tax due as a result of LIFO recapture. The calendar year 2007 was the last year CORPORATION was a "C" Corporation as we changed to "S" status effective January 1, 2008. As such, a LIFO recapture amount was due and was included in the Federal return per Federal regulations, and also in the Illinois return. Under IRC Section 1363(d) a deferral of $\frac{3}{4}$ of the tax attributable to this recapture was allowed for Federal purposes. We could find no regulations in the Illinois tax law disallowing this deferral and, therefore, we also deferred the tax due Illinois accordingly. The Illinois Department of Revenue maintains that the amount of the tax deferred in the 2007 return is due currently.

Ms. Z has told me that their position is unchanged, but could not provide me any regulation in the Illinois tax laws that specifically addressed this issue. She suggested that I write to the Legal Services Office. Our request is the same as before. Please provide any Illinois state tax law addressing the deferral of tax liability resulting from LIFO recapture. CORPORATION desires to be in compliance with all state tax laws of Illinois. I am attaching to this letter a copy of all previous correspondence for your information.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 203(b)(1) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) states that a corporation's base income is the amount equal to its taxable income as properly computed for federal income tax purposes modified by various addition and subtraction modifications found in IITA Section 203(b)(2). Pursuant to IITA Section 203(h), no addition or subtraction modifications are allowed unless specifically provided for in IITA Section 203(b)(2):

203(h): Legislative intention. Except as expressly provided by this Section there shall be no modifications or limitations on the amounts 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.

Your letter indicates that you are seeking an Illinois deferral for tax due as a result of the LIFO recapture amount pursuant to IRC Section 1363(d). You state that “[w]e could find no regulations in the Illinois tax law disallowing this deferral and, therefore, we also deferred the tax due Illinois accordingly.” Please note the clear language of IITA Section 203(h) cited above that states Illinois will not adjust federal taxable income unless adjustments are expressly provided for in the statute to preserve legislative intent. IRC Section 1363(d)(1) states that “the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year” so that the entire recapture amount will become part of the corporation’s Illinois taxable income. There is no LIFO recapture adjustment or deferral of $\frac{3}{4}$ of the LIFO recapture tax under Illinois law. The Notice of Tax Due and Error Notice Response are both correct.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax