

General Information Letter: A partnership may carry over an Illinois net loss incurred by another partnership only if it is treated as a continuation of that other partnership for federal income tax purposes.

April 22, 2009

Dear:

This is in response to your letter dated February 18, 2009, addressed to Ms. Z, Central Processing Bureau, Illinois Department of Revenue. Your letter has been forwarded to this office for reply.

Your letter states as follows:

This serves to respond to your above-captioned letter which requests copies of Form IL-1065 for tax years ending prior to December 31, 2007. Please note that 2007 was the first tax year for COMPANY, Illinois, LLC. I've attached a copy of the first page of the 2007 IL-1065 which shows the "first return" box checked in "Step 1, Part B". Also attached is a copy of a 12/12/2006 notice from the Internal Revenue Service assigning a "provisional Employer Identification Number (XX-XXXXXXX)" for COMPANY, Illinois, LLC.

In a telephone conversation earlier today, you enquired about bringing a "loss" into this new LLC. Let me explain: In 1980 we formed an Illinois limited partnership (COMPANY, Ltd.) which held both Illinois business assets (a 640-acre grain farm) and non-Illinois business assets (eg. commercial real estate in STATE). The employer ID for this entity was XX-XXXXXXX. In the early 1990's, the partnership incurred "losses" which were attributed to the farm. This resulted in some "carry-forwards" which were (and continue to be) reported on Schedule NLD. In early 2006, the Partnership was restructured as an (Illinois) LLC (COMPANY, LLC); and it took the same E.I.N. (XX-XXXXXXX) and included all the assets from the original partnership. In late 2006 we formed another (Illinois) LLC (COMPANY, Illinois, LLC); in January of 2007, we transferred all the non-STATE assets (including the Illinois farm with its carried-forward losses) into the new LLC. Thus, all that now remains in COMPANY, LLC (XX-XXXXXXX) is the property in STATE.

Our main objective in forming the two LLC's was to segregate the STATE assets from the other "COMPANY" assets from a liability standpoint. COMPANY, Illinois, LLC began 2008 with a "Net Loss Deduction" of \$101,740. It is expected that this will be worked down to "zero" in a few years. I've also enclosed a revised Illinois Schedule NLD for 2007 with Step 2 filled out.

Section 405(b) of the Illinois Income Tax Act, (35 ILCS 5/405(b)) states:

In the case of the acquisition of assets of a partnership in a transaction in which the acquiring partnership is considered to be a continuation of the partnership from which the assets were acquired under the provisions of Section 708 of the Internal Revenue Code and any regulations promulgated under that Section, the acquiring partnership shall succeed to and take into account, as of the close of the day of distribution or transfer, all Article 2 credits and net losses under Section 207 of the partnership from which the assets were acquired.

Under this section, the Illinois net operating loss carryovers of COMPANY, LLC may not be attributed to COMPANY, Illinois, LLC, unless COMPANY, Illinois, LLC is considered to be a continuation of COMPANY, LLC under the provisions of Section 708(b)(2)(B) of the Internal Revenue Code and

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Treasury Regulations § 1.708-1(d). Please respond to the Department's notice with an explanation of the transactions referred to in your letter, including facts that demonstrate whether COMPANY, Illinois, LLC is considered a continuing partnership for federal income tax purposes.

If you have further questions regarding, please contact me at (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.Iltax.com.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)