

General Information Letter: No subtraction is allowed for repayment of amounts which were received in a prior year under a claim of right and for which an itemized deduction was claimed in the current year.

April 22, 2009

Dear:

This is in response to your letter regarding the adjustment we made to your 2007 Illinois income tax return, which was forwarded to me for consideration. The nature of your letter 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:

I am requesting a further review of FY2007 Form IL-1040, along with submitting additional information for your further deliberations. The IL-1040 Form for FY 2007, Exhibit A, as originally submitted is correct for the following reasons:

1. All benefits paid in FY 2007 were disability benefits. No earned wages were paid. Exhibit B, Explanation of Disability Benefit and Liens Against, provides a complete explanation.
2. Federal Form 1040 for FY 2007, Exhibit C, submitted to the IRS documents that zero tax was due, and the withholding of \$1479.00 should be refunded.
3. IRS agreed with this determination and issued a refund of \$1479.00 on March 21, 2008, Exhibit D.
4. IRS agreed that \$11,301.00 was paid back to the company as required by PLAN. A copy of pertinent page describing this requirement is included with Exhibit B.
5. Therefore, only \$2,739.00 would qualify as base income for the FY 2007 Illinois tax return, Exhibit A, which would result in a tax due of \$22.00.
6. Since \$391.17 was withheld on W-2 for FY 2007 IL, a refund of \$369.00 was due.
7. Since a refund of \$30.00 was made on May 28, 2008, from the State of Illinois, Exhibit E, an additional refund of \$339.00 would be due.
8. I would appreciate your careful review of the above facts and exhibits.

### **Response**

Under Section 203 of the Illinois Income Tax Act (35 ILCS 5/203), the computation of a an individual's "net income" taxed by Illinois begins with the individual's federal adjusted gross 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 on the Schedule NR. Section 203(h) of the Illinois Income Tax Act provides that no addition or subtraction may be made to adjusted gross income unless expressly provided in Section 203 of the Illinois Income Tax Act.

On your federal income tax return for 2007, you reported adjusted gross income of \$14,040, all of which was taken from a Form W-2 issued to you by the COMPANY. You also claimed an itemized deduction for \$11,301 for repayments to the PLAN for amounts that had been paid to you under that Plan in prior years. On your Illinois income tax return for 2007, you reported the \$14,040 in adjusted gross income and claimed a subtraction for the \$11,301 as "railroad retirement income" on Line 33 of the Schedule M.

Because the \$11,301 is an itemized deduction, taken after you had computed your adjusted gross income for the year, it is not taken into account in computing your Illinois base income unless Section 203 of the Illinois Income Tax Act contains a specific provision allowing the subtraction of that amount from your adjusted gross income. There is no such provision. As stated in your letter, the \$11,301 was not "railroad retirement income," for which a subtraction is allowed under Section 203(a)(2)(L) of the Illinois Income Tax Act, but rather was disability income. Accordingly, the subtraction you claimed is not allowable.

Please be aware that the Department of Revenue has been attempting to change the Illinois Income Tax Act in order to allow a subtraction in cases such as yours. In this legislative session, the change is in House Bill 3876, on page 56. Unless and until that change is made, however, we cannot allow the subtraction.

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