

General Information Letter: Capital loss carrybacks properly allowed in the computation of federal taxable income are allowed in computing base income.

October 13, 2009

Dear:

This is in response to your letter dated July 23, 2009 in which you state the following:

While preparing our 2007 Form IL-1120, Illinois corporate tax return, the preparer asked us whether the current year capital losses could be carried back to offset prior year capital gains that were reported and taxed in Illinois, and how many years back and forward losses could be carried. Language in current, revised sources - - Title 86, Part 100, Section 2300 and 35 ILCS 5/506(b) – are unclear on this question.

In a conversation with a corporate tax specialist from the Department, our paid preparer learned that the issue should be addressed, in writing, to your office for interpretation and resolution. Given the performance of equity markets last year, we suspect this question will be asked by many taxpayers and that the Department has already established a procedure/policy on the matter. Therefore, we ask for a letter response outlining the proper treatment or reference to the appropriate document.

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.

Under Section 203 of the Illinois Income Tax Act (“IITA”; 35 ILCS 5/203), the computation of a taxpayer's "net income" taxed by Illinois begins with the taxpayer's federal taxable 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. Section 203(h) provides that no modification may be made to taxable income or adjusted gross income unless expressly provided in Section 203. There is no provision in IITA Section 203(b)(2) that can be interpreted to allow for any modification to capital gains, capital losses or capital loss carryovers.

There are two exceptions to this general rule that might be relevant. First, IITA Section 203(e)(2)(E) provides that “taxable income” means:

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, taxable income determined as if such corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group.

Regulation Section 100.5270(a)(1) provides that, in the case of a unitary business group:

The designated agent will determine combined base income by treating all members of the unitary business group (including ineligible members) as if they constituted a federal consolidated group and by applying the federal regulations for determining consolidated taxable income, except that the separate return limitation year provisions and the limitations on consolidation of life and non-life companies in Treasury Reg. Section 1.1502-47 shall not apply.

Under these two exceptions, a corporation that joins in a federal consolidated return and files separately for Illinois purposes computes a pro-forma separate return amount of taxable income, following the same rules as any other separate return filer, while a corporation that joins in a unitary Illinois filing and either filed a separate federal return or joined in a federal consolidated return with a group that is not identical to the Illinois unitary group computes its taxable income following the federal consolidated return regulations as applied to the Illinois group.

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