

General Information Letter: No adjustments to federal passive loss limitations or carryovers are allowed in computing base income.

October 15, 2009

Dear:

This is in response to your letter dated July 16, 2009, which was forwarded to me for consideration. The nature of your request 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:

Our clients, Mr. and Mrs. Z, have asked us to respond to your Notification Response dated June 25, 2009 (copy enclosed). In your notification, you have disallowed our clients' deduction for passive losses. I would like to give a little further clarification and detail as the deduction in question may not have been properly reported.

Our clients are residents of STATE1, but have interests in various partnerships that generate passive income and losses from properties in other states such as STATE2 and Illinois. Some of the partnerships generated passive income while others generated passive losses. Since 2000, our clients have been partners in PARTNERS. This partnership owned rental real estate in Illinois. Each year, since 2000, this partnership generated losses that our clients reported on their federal and Illinois returns. Our clients were allowed to deduct these losses on their federal returns since they had passive income from other sources. However, since this was the only Illinois income source for our clients, they never received any state benefit for these losses since they were only reported in Illinois.

In 2008, PARTNERS sold its Illinois property, thus generating a gain. Our clients reported this gain on their Illinois return where they expected to be able to finally take advantage of the losses they had incurred over the years. We feel that by disallowing these losses to be deducted on their Illinois return while taxing the gain from the same property would be a violation of the Internal Consistency Doctrine of the Commerce Clause.

I am attaching a schedule of the Illinois passive losses in question and ask that, in light of this additional information, you review our clients' file and make the appropriate adjustments to their account.

## **Response**

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

There is no provision in Section 203 that allows or requires a modification to the amount of passive income or loss properly reportable by an individual for federal income tax purposes for a taxable year, nor is there any provision in the Illinois Income Tax Act for carryovers of an individual's losses to other years. Accordingly, the subtraction claimed by your clients for passive losses incurred in other taxable years, and which were not includable in the computation of their federal adjusted gross income for 2008, was properly disallowed.

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