

General Information Letter: No adjustments to at-risk loss limitations or carryovers are allowed in computing base income.

October 22, 2009

Dear:

This is in response to your letter dated July 10, 2009. 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:

Your notice dated June 18, 2009, copy enclosed, states that the taxpayer's Schedule M subtraction for a "prior year Illinois subtraction not subtracted due to at risk limitations" is not being allowed due to the lack of support for the \$128,665 subtraction.

After reviewing your notice and the return, it has been determined that the total subtraction amount on Schedule M is incorrect. The subtraction amount for the "prior year Illinois subtraction not subtracted due to at risk limitations" has been recalculated to properly include the 2007 Schedule K-1-P subtraction adjustment of \$24,855 (see Schedule K-1-P). This correction has decreased the overall subtraction on Schedule M to \$151,442, instead of \$153,550 as previously reported.

I am enclosing an updated Schedule M and a workpaper to support the taxpayer's updated Schedule M.

Please reprocess this updated information enclosed and issue the corrected refund of \$3,976 for 2007, which is based on the updated information enclosed.

Response

A review of the worksheet you enclosed with your correspondence appears to show that the taxpayers were required to add back bonus depreciation deductions claimed by a Subchapter S corporation in which Mr. Z was the sole shareholder, but failed to add back the entire amount of the bonus depreciation on the grounds that not all of the deduction was allowable during a year because of the federal "at risk" limitations. The taxpayers therefore deferred the addition until they were allowed a federal income tax benefit from the bonus depreciation for a year. They also deferred claiming the related subtractions allowed to taxpayers who had claimed federal bonus depreciation until the year in which the federal at-risk rules allowed them a tax benefit from the bonus depreciation deduction.

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 taxable income or adjusted gross income unless expressly provided in Section 203. Section 203(a)(2)(D-15) requires an individual taxpayer to add

back to his or her federal adjusted gross income, “an amount equal to the bonus depreciation deduction taken on the taxpayer’s federal income tax return for the taxable year under subsection (k) of Section 168 of the Internal Revenue Code.” Section 203(a)(2)(Z) then allows the taxpayer to subtract an amount that generally equals the difference between the depreciation deduction actually taken for federal income tax purposes and amount of the depreciation deduction that would be allowed if no bonus depreciation had been claimed. Subparagraphs 203(a)(2)(D-16) and (AA) provide that, when the taxpayer disposes of an asset on which bonus depreciation had been claimed or the asset reaches the end of its depreciable life, all additions and subtractions made with respect to that asset must be reversed. There is no provision in Section 203 that would defer any of these additions or subtractions when the taxpayer fails to receive the full tax benefit of all its deductions in the year incurred because of the federal “at risk” limitations.

The taxpayers’ deferral of additions and subtractions was therefore incorrect. The taxpayers should determine their Illinois liabilities for all years in which they misapplied the bonus depreciation adjustment statutes and file amended returns reporting and paying additional liabilities or claiming refunds for any open years.

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