

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)

- a) In general
 - 1) This Section relates to the exercise of the election provided in IITA Section 603 with respect to overpayments and liabilities that arise as the result of:
 - A) the filing of an original return;
 - B) an assessment due to a mathematical error;
 - C) the filing of an amended return showing an increase in tax liability;
 - D) the filing of an amended return showing a decrease in tax liability which is approved by the Department;
 - E) the submission by a taxpayer of a signed Form IL-870 waiver of restrictions on assessment and collection under Section 907 of the Act; and
 - F) the execution of a Form IL-870-AD pursuant to Section 100.9000(c)(5) of this Part.

IITA Section 603 was repealed by Public Act 88-195, which also amended IITA Section 502(e) to require combined returns for taxable years ending on or after December 31, 1993. No election under that Section may be made with respect to taxable years ending on or after December 31, 1993.

- 2) If the overpayment arises from subsection (a)(1) (A) or (D) above, it may only be credited against the liability for the same taxable year of one or more other taxpayers that are members of the same unitary group for that taxable year. If the overpayment arises from subsection (a)(1)(E) or (F) above, it may be credited against the liability of one or more other members of the same unitary group for any taxable year within the audit period of the electing company. The audit period of the electing company is any taxable year for which the original return or an amended return of the electing company has been examined under IITA Section 904(a) or 909(e) and the electing company has been notified that

the correct tax is less than, equal to, or more than the amount of tax already assessed.

- b) Elements of the election. The election may only be made by a taxpayer that has an overpayment and has filed its tax return. The election is only available for taxable years ending before December 31, 1985. The election, including the alternative election, is binding and cannot later be amended, revised, or cancelled by the taxpayer. The election must be specific on the following matters:
- 1) the identities of other members of the unitary business group to which the overpayment is assigned,
 - 2) the amount of the overpayment assigned to each such member, and
 - 3) the date the overpayment was made.
- c) Meaning of overpayment. A company's overpayment for a taxable year is the amount by which its payment and credits for that year exceed its assessed liability for the same year under IITA Section 903, except for any penalties imposed under IITA Section 804 as a result of making this election.
- 1) In ascertaining whether a taxpayer has an overpayment for a particular taxable year and in computing the amount of such overpayment, an amended return constituting a claim for refund under IITA Section 909(d) shall not be treated as reducing the taxpayer's assessed liability for the taxable year unless the taxpayer has received a notice from the Department that the claim has been approved and that a refund will be issued.
 - 2) If an overpayment has been refunded or credited forward to the taxpayer's next taxable year prior to an election being made, that overpayment is no longer available to be used as an offset against any other member's liability, and the refund or credit forward will not be reversed or cancelled by the Department at the request of the taxpayer. An overpayment elected to be credited forward to the taxpayer's next taxable year will be considered made as of the first installment due date of the credit carryforward year. Consequently, a credit carryforward will be binding once the due date for the first estimated tax installment of the carryforward year has passed without an election to offset having been made, and such overpayment will not be available for offset after that date. For purposes of this section the date on which a refund will be considered to be made will be the "process date," meaning the date the Department processes an account by computer for the issuance of a warrant, which is permanently recorded date maintained by the Department.
- d) Procedure
- 1) Manner and time for making an election. The election must be made on forms prescribed by the Department, and it must be filed before the Department has issued a refund for the overpayment or before the overpayment has been credited forward to the taxpayer's next taxable year. All the members of a unitary group who wish to file an election must do so at the same time and on the same form. The election is only available to unitary business group

members that have overpayments. Nothing in this Section permits a member of the unitary business group having a balance due on its liability to claim unilaterally the overpayment made by another member for the same taxable year. Both the overpaid and underpaid members are bound by the consequences of the election. The election should be filed with the original or amended returns which are related to the election if those returns have not been previously filed.

- 2) The Department's response to the election. As soon as practicable (but not later than 3 months) after the election is filed, the Department shall inform the electing taxpayer and each taxpayer that is to receive an assignment of payments pursuant to the election that the election has been approved or disapproved. An election will be disapproved if it violates any of the substantive or procedural requirements set out in this Section. In addition, an election may be disapproved if the Department has chosen to exercise its right under IITA Section 909(a) or Section 39e of the Civil Administrative Code of Illinois to use the overpayment to defray another Illinois tax liability of the electing taxpayer, thus causing the overpayment to be less than the electing taxpayer had anticipated in filing its election.
- 3) Alternative elections
 - A) If the election is disapproved because it is premised on a mistake as to the size of the overpayment, the notice of disapproval must provide the electing company with an explanation of the correct calculation of the overpayment, if any. If the election is disapproved because it violates one of the other requirements set out in this Section, the notice of disapproval must state the nature of the violation. In either event, the electing company shall have 45 days from the date that the notice of disapproval is issued to file an alternative election, provided that an election otherwise meeting the requirements of this Section is possible. A notice of disapproval is considered issued on its postmark date. The alternative election may include overpaid members of the unitary group which were not included in the original election. The alternative election shall be made on the form prescribed by the Department and should take into account whatever mistakes or violations the Department has cited in its notice of disapproval. If, by reason of the matters dealt with in the Department's notice of disapproval, the electing company is shown not to have an overpayment for the taxable year, then an alternative election may not be filed. In situations in which an alternative election may be filed, if one is not filed within 45 days of the date that the notice of disapproval is issued, then all companies involved will be treated as though no election had ever been attempted.
 - B) The Department will approve an election, if it is premised on a mistake in the size of the electing company's overpayment and if precisely the same election could be made on the basis of the reduced overpayment.
 - i) **EXAMPLE:** Corporation A, Corporation B, and Corporation C are all members of the same unitary business group for their taxable

years ended November 30, 1984. Each filed its Illinois income tax return on February 15, 1985 on a combined apportionment basis with the other two. Corporation C showed a balance of tax due on its return of \$20,000; Corporation A showed an overpayment of \$20,000; and Corporation B showed an overpayment of \$40,000 on its return. Corporation A filed an election under this Section, assigning its entire overpayment to Corporation C and specifying that \$5,000 should be considered as having been paid by Corporation C on each of the four dates that Corporation A had made estimated tax installments. Corporation B indicated on its return that its entire \$40,000 overpayment should be refunded. In processing Corporation A's return, the Department identified a mathematical error which caused an additional \$16,000 to be assessed on Corporation A's return with a consequent reduction of Corporation A's overpayment by that same amount. In addition to notifying Corporation A of the mathematical error assessment, the Department notified both Corporation A and Corporation C that the election had been disapproved. At the time the disapproval notices were issued, Corporation B still had not received its \$40,000 refund.

- ii) **QUESTION:** The question is whether the tax compliance personnel of the A-B-C unitary business group have any alternative to simply having Corporation A file an alternative election assigning \$4,000 to Corporation C and having Corporation C pay whatever Section 804 penalty and interest may accrue as a result of its \$16,000 balance due.
 - iii) **ANALYSIS AND CONCLUSION:** Corporations A and B may make an alternative election to assign \$4,000 and \$16,000, respectively, to Corporation C or Corporation B may make an alternative election to assign \$20,000 of its unrefunded overpayment to Corporation C.
- e) Consequences of the election as between the electing company and the company receiving the assignment of overpayments
- 1) Once an election is approved, the electing company loses all entitlement to the overpayments assigned and all benefits which would otherwise have accrued to it under the Act as the actual payor of the overpayments assigned. Conversely, once an election is approved, companies receiving assignments of overpayments shall be entitled to all of the benefits that would have accrued to them under the Act had they themselves made the payments assigned to them at the times specified in the election.
 - A) **EXAMPLE:** Corporation A and Corporation B are part of the same unitary business group for calendar 1984. Corporation A's total Illinois income tax liability for 1984 is \$20,000 and its total payments, \$30,000. Corporation B's total Illinois income tax liability for 1984 is \$12,000 and its total payments, \$2,000. Corporation A makes an election assigning its

entire \$10,000 overpayment to Corporation B. The election is approved by the Department, and the companies are so notified. At a later date, Corporation B discovers that an item of its own nonbusiness (nonapportionable) income, which it had allocated to Illinois on its original return really should not have been allocated to Illinois under Section 303 of the Act. Corporation B files an amended return, relating to this item, claiming that its liability for 1984 should have been \$6,000 less than shown on its original return and that it is consequently entitled to a refund of \$6,000. The Department examines the claim under Section 909(e), determines that it is meritorious, and issues a notice of refund. Corporation A's legal officer, having heard of the claim filed by Corporation B and wishing to collect whatever he can on a large debt owed by Corporation B to Corporation A, petitions the Department to issue the \$6,000 refund to Corporation A.

B) ANALYSIS AND CONCLUSION: The Department will not grant Corporation A's petition, and it will refund the \$6,000 to Corporation B. By making the election, Corporation A lost all entitlement to the assigned amount.

2) A company may not elect to assign an amount in excess of its overpayment. However, as a result of making an election, a company may subject itself to penalties for underpayment of estimated tax, and it must agree to be liable for any such penalties as a condition of making the election.

A) EXAMPLE: Corporation A and Corporation B are members of the same unitary business group for 1984; neither has ever been an Illinois income taxpayer before. On completing their Illinois income tax returns for 1984, Corporation A and Corporation B arrive at the following conclusions:

i) Corporation A:

Total Illinois Income Tax Liability	\$2,000,000
1st est. tax installment - April 16, 1984	\$400,000
2nd est. tax installment - June 15 1984	400,000
3rd est. tax installment - September 17, 1984	800,000
4th est. tax installment - December 17, 1984	<u>800,000</u>
	<u>\$2,400,000</u>
	\$ 400,000

ii) Corporation B:

Total Illinois Income Tax Liability	\$1,000,000
1st est. tax installment - September 17, 1984	\$200,000
2nd est. tax installment - December 17, 1984	<u>600,000</u>
	<u>\$800,000</u>
	\$200,000

Balance of Tax Due. The companies recognize that Corporation B has underpayments of estimated tax within the meaning of Section 804(b) of the Act of \$200,000 as of April 16 and in the accumulated amount of \$400,000 as of June 15 and September 17 and that these underpayments will generate a penalty under Section 804(a) of \$56,547.94. The companies further recognize that, due to the seasonal nature of Corporation B's business, an estimated tax payment of \$100,000 on or before April 16 would have qualified Corporation B for the exception of Section 804(d)(3) with respect to the underpayments mentioned above, with the result that Corporation B would have incurred no estimated tax penalty whatsoever for 1984. In view of these circumstances, Corporation A filed a timely election to assign \$200,000 of its overpayment to Corporation B, specifying that the \$100,000 should be considered as having been paid by Corporation B on April 16, 1984, and \$100,000 as of September 17, 1984. Realizing that it has caused its first installment to be reduced below what is necessary to meet its own estimated tax obligations, Corporation A expects to incur an estimated tax penalty under Section 804(a) of the Act in the amount of \$10,191.78, that being the penalty generated by a \$100,000 underpayment for the 155 day period from April 15, 1984 to September 17, 1984. The election will have the effect of saving the A-B unitary business group \$46,356.16 in estimated tax penalty.

B) ANALYSIS AND CONCLUSION: This election will be approved by the Department, and as a result, Corporation A will be liable for the penalty for underpayment of estimated tax in the amount of \$10,191.78.

f) Additional provisions

- 1) The regulations are effective for all elections made under Section 603 of the Illinois Income Tax Act as amended by PA 93-1289. This provision provides coverage for elections made and processed by the Department prior to the regulations being adopted.
- 2) Overpayments can be divided up and used to offset more than one underpaid account.
- 3) Partnerships and Subchapter S corporations are qualified to participate in elections made under this Section.

- 4) Overpayments can only be assigned to accounts with liabilities. "Liability" includes penalties such as underpayment of estimated tax, late filing penalty, and late payment penalty. Movement of payments can cause penalties of underpaid accounts to be reduced or cancelled altogether.
- 5) The purpose of the reference to IITA Section 911 in IITA Section 603 is to preclude the creation of a new claim period outside of Section 911 by reason of new Section 603.
- 6) A company will not be considered a member of the same unitary business group as another company for purposes of this election unless the assessment from which the overpayment is derived is supported by a return, amended return, waiver of restrictions on assessment and collection or executed Form IL-870-AD or IL-870 premised on the electing company being a member of the same unitary business group as such other company.

(Source: Amended at 24 Ill. Reg. 10593, effective July 7, 2000)