

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9410 Limitations on Claims for Refund (IITA Section 911)

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a) In General

Except as otherwise provided in this Section, *no credit or refund shall be allowed or made with respect to any year unless a claim for refund or credit was filed on or before the later of:*

- 1) *3 years after the date the return was filed or, in the case of returns required under Article 7 of the IITA respecting any amounts withheld as tax, the 15th day of the 4th month following the close of the calendar year in which such withholding was made); or*
- 2) *one year after the date the tax was paid.* (IITA Section 911(a))
- 3) Consequence of Failing to File a Timely Refund Claim. In the case of any overpayment, the Department may grant a credit or refund of the amount of such overpayment within the applicable period of limitations for a claim for refund (see IITA Section 909(a)). Failure of a taxpayer to file a refund claim before the expiration of the limitations period for a taxable year precludes the Department from granting a credit or refund of any overpayment for that taxable year after the date of expiration. The expiration of the period for filing a refund claim for a taxable year:
 - A) does not preclude the taxpayer from asserting any adjustments to net income or credits to the extent the adjustments would reduce or eliminate a deficiency asserted by the Department for that taxable year. (See *Lewis v. Reynolds*, 284 U.S. 281 (1932).)
 - B) does not preclude the taxpayer from asserting any adjustments to the amount of net loss incurred under IITA Section 207 (except as provided in subsection (g) of this Section for losses incurred in taxable years ending prior to December 31, 2002) or of any credit earned in that taxable year, or the amount of net loss deduction under IITA Section 207 or of any credit carryforward that is properly taken in that taxable year, in order to compute the amount of net loss deduction or credit carryforward allowable in another taxable year, so that a timely refund claim may be filed for that other taxable year or a deficiency for that other taxable year may be reduced or eliminated. (*Springfield Street Railway Co. v. U.S.*, 312 F.2d 754 (Ct. Cl. 1963).)
- 4) See subsection (e) regarding when a return is deemed filed.

b) Federal Changes

Irrespective of whether notification of a federal change required by IITA Section 506(b) has been filed by a taxpayer, a claim for refund may be filed not later than two years

after the date the notification was due. The recoverable amount of a claim filed under this subsection (b) is limited to any overpayment resulting from a change in the taxpayer's net income, net loss, or Article 2 credits for the taxable year for which the notification is required, and any resulting change in a net loss or Article 2 credit carryover to a subsequent year, after giving effect to the items of adjustment in the alteration required to be reported. (IITA Section 911(b)(1)) IITA Section 506(b) requires that a notification of federal change be filed with the Department not later than 120 days after the alteration has been agreed to or finally determined for federal income tax purposes or, if earlier, not later than 120 days after any federal income tax deficiency or refund, tentative carryback adjustment, or abatement or credit resulting therefrom, has been assessed or paid.

c) Extension by Agreement

- 1) When, before expiration of the time otherwise prescribed in this Section for the filing of a claim for refund, the Department and the taxpayer have consented in writing to the filing after that time, then a claim may be filed at any time prior to the expiration of the period agreed upon.
- 2) *In the case of a taxpayer who is a partnership, Subchapter S corporation, or trust and who enters into an agreement with the Department pursuant to this subsection (c) on or after January 1, 2003, a claim for refund may be filed by the partners, shareholders, or beneficiaries of the taxpayer at any time prior to the expiration of the period agreed upon. Any refund allowed pursuant to the claim, however, shall be limited to the amount of any overpayment of tax due under the IITA that results from recomputation of items of income, deduction, credits, or other amounts of the taxpayer that are taken into account by the partner, shareholder, or beneficiary in computing its liability under the IITA. (IITA Section 911(c))*
- 3) Prior to the expiration of any extended period under this subsection (c), the period may be successively further extended for any or all the taxable years covered by the extension agreement by the obtaining of a further written consent.
- 4) Under Section 100.9400(f)(1), an original return is not a refund claim that preserves a taxpayer's right to a refund or credit for an overpayment of tax after the statute of limitations for filing of a refund claim has otherwise expired. However, a timely-filed original return showing an overpayment shall be treated as an extension of time for the filing of a claim for refund of that overpayment through the date that is 6 months after the date on which the Department issues a refund of a portion of the reported overpayment, notifies the taxpayer that it has allowed a credit for a portion of the reported overpayment, or notifies the taxpayer that no refund or credit of the reported overpayment will be allowed.

d) Limit on Amount of Credit or Refund

- 1) *Limit When Claim is Filed within a 3-Year Period*
With respect to a taxable year for which a claimant-taxpayer has filed a return and during the 3-year period in subsection (a)(1) has filed a claim for refund, the amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim, equal to 3 years plus the

period of any extension of time for filing the return. (IITA Section 911(d)(1)) For the purposes of this subsection (d)(1), any amount paid on account of withheld tax or estimated tax (IITA Arts. 7 and 8) or any other payment paid as tax or in respect of tax imposed by the Act (for example tax paid with a return filed before the due date) shall be deemed to have been paid not earlier than the last day prescribed for filing the return (irrespective of extensions) for the taxable year for which the payments are applicable (see IRC section 6513(b).)

- 2) Limit When Claim is Not Filed Within a 3-Year Period
Irrespective of whether a return was filed, *if the claim was not filed within the 3-year period* in subsection (a) or within an agreed-to extended period for filing of a refund claim, *the amount of credit or refund shall not exceed the portion of the tax paid during the one year immediately preceding the filing of the claim.* (IITA Section 911(d)(2))
 - 3) Limit When Claim is Filed Under an Extension
If the claim is filed prior to the expiration of an extended period for filing under subsection (c), the credit or refund is limited to the amount that could have been allowed if the claim had been filed prior to the expiration of the period that was extended.
- e) *Time Return Deemed Filed*
For purposes of this Section, a tax return filed before the last day prescribed by law for the filing of the return (including any extensions) shall be deemed to have been filed on the last day. (IITA Section 911(e)) The last day prescribed for filing returns shall include any automatic extensions of time for filing, regardless of whether the taxpayer filed the return prior to the unextended due date.
- f) Special Period of Limitation with Respect to Net Loss Carrybacks
The 3-year period of limitation prescribed in subsection (a)(1) does not apply if the claim for refund relates to an overpayment attributable to a net loss carryback provided by IITA Section 207. Instead, the period of limitation shall be that period which ends 3 years after the time for filing the return (including extensions) for the taxable year in which the net loss occurs, or the period prescribed in subsection (c) in respect of that taxable year, whichever expires later. The amount of the refund may exceed the portion of the tax paid within the period provided in subsection (d) to the extent of the amount of the overpayment attributable to the net loss carryback.
- g) Net Losses. *On and after August 23, 2002, no claim for refund shall be allowed to the extent the refund is the result of an amount of net loss incurred under IITA Section 207 that was not reported to the Department within 3 years after the due date (including extensions) of the return for the loss year on either the original return filed by the taxpayer or on amended return or to the extent that the refund is the result of an amount of net loss incurred in any taxable year under Section 207 for which no return was filed within 3 years after the due date (including extensions) of the return for the loss year.* (IITA Section 911(h))
- 1) This subsection (g) applies only to net losses incurred in taxable years ending prior to December 31, 2002.

- 2) This subsection (g) does not preclude a taxpayer from increasing a net loss in order to carry forward deduction of that increased net loss to reduce or eliminate a deficiency for a subsequent taxable year.

EXAMPLE:

Corporation A and its wholly-owned subsidiary Corporation B are members of a unitary business group, but filed separate returns for calendar years 2005 through 2009. Corporation A reported positive net income every year, and Corporation B reported net losses under IITA Section 207 for each year. After auditing Corporation A's returns for 2007, 2008 and 2009, the Department adjusted various items of income and apportionment, and issued notices of deficiency. The limitations periods for filing claims for refund have expired for 2005 and 2006, but not for the later years.

The taxpayer may file amended returns for all of the years in question to combine the corporations so that Corporation B's net losses for the years under audit can offset the income of Corporation A, and may carry any combined net loss properly determined for any year (including 2005 and 2006) to each subsequent year in order to determine the correct liabilities for the years 2007, 2008 and 2009, and reduce or eliminate the deficiencies determined by the Department or to claim refunds for the open years.

- h) *Periods of Limitation Suspended While Taxpayer is Unable to Manage Financial Affairs Due to Disability*
 - 1) *In the case of an individual, the running of the periods specified in this Section shall be suspended during any period when that individual is financially disabled. (IITA Section 911(i))*
 - 2) *For purposes of this subsection (h), an individual is financially disabled if that individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be treated as financially disabled during any period when that individual's spouse or any other person is authorized to act on behalf of that individual with respect to financial matters. (IITA Section 911(i)) A person who has been determined to be financially disabled for any period of time for purposes of IRC section 6511(h) shall be deemed to be financially disabled for purposes of this subsection (h) for the same period.*
 - 3) *After a limitations period has expired, legislation cannot extend the period. (See Sepmeyer v. Holman, 162 Ill. 2d 249 (1994).) Accordingly, this subsection (h) shall apply only to periods specified in this Section that had not expired prior to August 15, 2014, the effective date of Public Act 98-970, which enacted IITA Section 911(i).*

(Source: Amended at 40 Ill. Reg. 10925, effective July 29, 2016)