

General Information Letter: No refund of estimated tax payments may be made unless original return is filed within 3 years of the original due date, even if refund claim is based upon a net loss carryback and is filed within 3 years of the due date of the return for the loss year.

April 25, 2002

Dear:

This is in response to your letter dated April 19, 2001, in which you object to the disallowance of a carryforward to the taxable year ending December 31, 1998 of an Illinois net loss incurred in the taxable year ending March 31, 1997. The nature of your letter 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.revenue.state.il.us.

In your letter you have stated the following:

In response to your correspondence dated March 30, 2001, please find the attached information supporting the reasons why the taxpayer does not agree with your determination of additional tax liability relating to the tax year ended December 31, 1998.

1. The taxpayer incurred a net operating loss in the fiscal year ended March 31, 1997 which it properly carried back to fiscal year March 31, 1994 (please find attached Form IL-1120-X), March 31, 1995 and March 31, 1996.
2. The IDOR processed refunds for tax years ended March 31, 1995 and March 31, 1996, but did not process the refund claim for fiscal year ended March 31, 1994 due to a misinterpretation of the Illinois net operating loss carryback provisions – apparently confusing the 2 vs. 3 year NOL carryback changes that occurred in August of 1997.
3. To be consistent with the IDOR's position of allowing only a 2 year carryback claim, for state purposes, the taxpayer carried forward the March 31, 1997 net operating loss in excess of the amount allowed as a carryback by IDOR to fiscal years ended March 31, 1995 and March 31, 1996 to its December 31, 1998 tax period.

Based upon the above discussion and the attachments to this correspondence, the taxpayer requests that IDOR allow for the carryforward of excess net operating loss from the period ended March 31, 1997 to the tax period ended December 31, 1998. Concluding otherwise would not be equitable to the taxpayer since the \$89,380 excess NOL would effectively go unused for Illinois income tax purposes. In addition, for your information, the IRS did allow for the original NOL carryback and did provide a refund to the taxpayer for the fiscal year ended March 31, 1994 under the same facts presented by the IDOR.

The attachments to your letter include a copy of an undated, unsigned Form IL-1120-X for the taxable year ending March 31, 1994, and a copy of a Form IL-1120 for the taxable year ending March 31, 1994, signed by yourself and dated January 9, 1999. The Form IL-1120 reports net income before net loss deductions of \$89,380 and a net loss deduction of \$89,380 carried back from the taxable year ended March 31, 1997.

The Form IL-1120 filed by Z Company for its taxable year ending December 31, 1998, reports net income before net loss deductions of \$191,215, and the Schedule NLD claims a net loss deduction of \$136,332 carried forward from taxable year ending March 31, 1997, which is the excess of that net loss over the deductions claimed for taxable years ending March 31, 1995 and 1996.

Response

Section 911(f) of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) provides:

No claim for refund based on the taxpayer's taking a credit for estimated tax payments as provided by Section 601 (b) (2) or for any amount paid by a taxpayer pursuant to Section 602(a) or for any amount of credit for tax withheld pursuant to Section 701 may be filed more than 3 years after the due date, as provided by Section 505, of the return which was required to be filed relative to the taxable year for which the payments were made or for which the tax was withheld.

The refund claim for the taxable year ending March 31, 1994, was denied because no original return or other claim was filed for that year within 3 years after the due date of that return. The fact that the refund claim was otherwise timely under Section 911(g) of the Illinois Income Tax Act because it was filed within 3 years of the due date of the return for the taxable year ending March 31, 1997, is irrelevant. The Department's file for Z Company for its taxable year ending March 31, 1994, contains a letter to you dated September 14, 1999, explaining this provision of the Illinois Income Tax Act.

Section 207(a)(2)(B) of the Illinois Income Tax Act provides that, with respect to Illinois net losses:

The entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.

Under this provision, Z Company is required to carry back its loss incurred in its taxable year ended March 31, 1997, to offset income in its taxable year ended March 31, 1994, before it can carry the loss to any subsequent year. The fact Section 911(f) bars payment of the refund may be paid for the taxable year ending March 31, 1994, has no effect on this provision.

Accordingly, it appears that the adjustment to Z Company's net loss deduction for its taxable year ending December 31, 1998, was properly reduced by the \$89,380 amount of net loss incurred in the

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taxable year ending March 31, 1997, that was required to be carried back and deducted in the taxable year ending March 31, 1994.

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