IT 19-0006-GIL 05/01/2019 CREDITS – OTHER

Various issues related to the credits for costs of remediating properties in a River Edge Redevelopment Zone addressed. (This is a GIL.)

May 1, 2019

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter received March 21, 2019, in which you request information regarding Illinois income tax. 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.

Your letter states as follows:

> I am writing this letter to obtain clarification from the Illinois Department of Revenue concerning the procedure and forms required to claim the NAME - Remediation Tax Credit. I have received conflicting information from agents of the Department of Revenue as to which forms must be used to claim the credit, I am requesting specific direction from your office.
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> I have attached hereto a letter from the Illinois Environmental Protection Agency providing a determination that our Company is eligible for a tax credit for certain remedial expenses incurred under the PROPERTY Zone program. Our property is located within the PROPERTY Zone, and, from 2014 to 2016, our Company took the property though the State of Illinois' voluntary site remediation program, eventually obtaining a no further remediation letter on the property.
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> After reviewing our application, the Illinois Environmental Protection Agency Determined that $$$ of remedial expenses are eligible for the tax credit.
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> After reviewing our application, the Illinois Environmental Protection Agency determined that $$$ of remedial expenses are eligible for the tax credit.
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> Our Company is an Illinois limited liability company. The expenses incurred relate back to 20XX, so we will be amending our 20XX return to reflect the credit.
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> I would welcome the opportunity to discuss this in more detail, at your earlies convenience.

RULING

The legal description of the PROPERTY Zone site remediation tax credit can be found in Section 201(n) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/1-1 et seq.). That statute provides as follows:

(n) PROPERTY Zone site remediation tax credit.

(i) For tax years ending on or after December 31, 2006, a taxpayer shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for certain amounts paid for unreimbursed eligible remediation costs, as specified in this subsection. For purposes of this

> Section, "unreimbursed eligible remediation costs" means costs approved by the Illinois Environmental Protection Agency ("Agency") under Section 58.14a of the Environmental Protection Act that were paid in performing environmental remediation at a site within a PROPERTY Zone for which a No Further Remediation Letter was issued by the Agency and recorded under Section 58.10 of the Environmental Protection Act. The credit must be claimed for the taxable year in which Agency approval of the eligible remediation costs is granted. The credit is not available to any taxpayer if the taxpayer or any related party caused or contributed to, in any material respect, a release of regulated substances on, in, or under the site that was identified and addressed by the remedial action pursuant to the Site Remediation Program of the Environmental Protection Act. Determinations as to credit availability for purposes of this Section shall be made consistent with rules adopted by the Pollution Control Board pursuant to the Illinois Administrative Procedure Act for the administration and enforcement of Section 58.9 of the Environmental Protection Act. For purposes of this Section, "taxpayer" includes a person whose tax attributes the taxpayer has succeeded to under Section 381 of the Internal Revenue Code and "related party" includes the persons disallowed a deduction for losses by paragraphs (b), (c), and (f)(1) of Section 267 of the Internal Revenue Code by virtue of being a related taxpayer, as well as any of its partners. The credit allowed against the tax imposed by subsections (a) and (b) shall be equal to 25% of the unreimbursed eligible remediation costs in excess of $100,000 per site.
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> (ii) A credit allowed under this subsection that is unused in the year the credit is earned may be carried forward to each of the 5 taxable years following the year for which the credit is first earned until it is used. This credit shall be applied first to the earliest year for which there is a liability. If there is a credit under this subsection from more than one tax year that is available to offset a liability, the earliest credit arising under this subsection shall be applied first. A credit allowed under this subsection may be sold to a buyer as part of a sale of all or part of the remediation site for which the credit was granted. The purchaser of a remediation site and the tax credit shall succeed to the unused credit and remaining carry-forward period of the seller. To perfect the transfer, the assignor shall record the transfer in the chain of title for the site and provide written notice to the Director of the Illinois Department of Revenue of the assignor's intent to sell the remediation site and the amount of the tax credit to be transferred as a portion of the sale. In no event may a credit be transferred to any taxpayer if the taxpayer or a related party would not be eligible under the provisions of subsection (i).
>
> (iii) For purposes of this Section, the term "site" shall have the same meaning as under Section 58.2 of the Environmental Protection Act.

Underlined emphasis added.

In order to claim an income tax credit, taxpayers filing a Form IL-1120, Corporation Income and Replacement Tax Return, Form IL-1041, Fiduciary Income and Replacement Tax Return, or Form IL-990-T, Exempt Organization Income and Replacement Tax Return must complete Schedule 1299-D.

Please be aware that by operation of the sunset provisions found in Section 250 of the IITA, the P Zone site remediation tax credit has expired for tax years beginning on or after July 12, 2016. If the tax year for which you wish to claim the credit begins on or after July 12, 2016, you cannot claim the credit.

As a result, the current Schedule 1299-D for 2018 does not include instructions for applying for the PROPERTY Zone site remediation tax credit. The last set of Schedule-D instructions to refer to this

tax credit is the 2016 version which can currently be found on the Department's website at: https://www2.illinois.gov/rev/forms/incometax/Documents/2016/business/miscellaneous/schedule-1299-d-instr.pdf

Page 6 of the 2016 Schedule 1299-D Instructions, states as follows:

> **PROPERTY Zone Remediation Credit**
> Note→If your tax year **begins** on or after July 12, 2016, you cannot claim this credit on Schedule 1299-D, Lines 26a through 28.
> The PROPERTY Zone Remediation Credit allows a credit for tax years ending on or after December 31, 2006, for unreimbursed eligible remediation costs incurred in a Site Remediation Program under the Environmental Protection Act in a river edge development zone. You may claim the credit for costs deducted on your federal income tax return.
> The credit cannot be taken by any taxpayer if the taxpayer or any related party caused or contributed to a release of regulated substances on, in, or under the site at which the otherwise eligible remediation costs were incurred.
> To qualify for this credit, you must have received approval of the eligible remediation costs from the Illinois Environmental Protection Agency (IEPA) on forms IEPA provides. The credit is 25 percent (.25) of the amount of unreimbursed eligible remediation costs that were:
> - in excess of $100,000;
> - approved by IEPA; and
> - incurred in performing environmental remediation at a Site Remediation Program site located within a river edge redevelopment zone for which a "No Further Remediation" (NFR) letter was issued by IEPA during the taxable year and recorded by the recipient.
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> The credit cannot be passed through by a partnership to its partners or by a subchapter S corporation to its shareholders.
> You may carry any excess credit forward for five years. Any unused credit and remaining carryforward period may be sold to a buyer as part of a sale of all or part of the remediation site for which the credit was granted. The seller must record the transfer of the credit in the chain of title of the site and notify the director of the Illinois Department of Revenue, in writing, of the intent to sell the remediation site and of the amount of credit to be transferred.
> **Line 26 –**
> **Column A –** Enter the name of the PROPERTY zone in which the remediation site is located.
> **Column B –** Enter the total unreimbursed remediation costs approved by IEPA for the site, minus $100,000. If the total unreimbursed remediation costs approved by IEPA for the site is $100,000 or less, you are not entitled to a credit for the site.
> **Column D –** Multiply the amount in Column B by 25 percent (.25).
> **Line 27 –** Enter the total of any PROPERTY Zone Remediation Credit that was transferred to you.
> Note→If you report an amount on Line 27, include a copy of the written notice of the transfer that the seller sent to the Illinois Department of Revenue.
> **Line 28 –** Add the amounts in Column D, Lines 26a through 26c, (including the amounts on any additional schedules you have attached) and Line 27. This is your total PROPERTY Zone Remediation Credit.
> **Line 29 –** Add Lines 14, 17, 19, 22, 25, and 28. Enter the total here

and on Page 3, Line 30.

According to page 2 of the 2016 Schedule 1299-D Instructions: "If you claim the **PROPERTY Zone Remediation Credit**, <u>you must attach a copy of proof of the approval form issued by the Illinois Environmental Protection Agency</u>."

Underlined emphasis added.

To your letter, you attached a letter from the Illinois Environmental Protection Agency ("Illinois EPA") dated March 6, 2019. In this letter, Illinois EPA states: "…The Illinois EPA concurs the site is located within the PROPERTY Zone and eligible for a tax credit and has received a No Further Remediation letter dated November 13, 2015 from the Illinois EPA…The Illinois EPA…has determined $$$ would be considered eligible remediation costs under Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]." Under Section 201(n)(i) of the IITA, as highlighted above, the PROPERTY Zone site remediation tax credit "must be claimed for the taxable year in which Agency approval of the eligible remediation costs is granted." From the attached letter, it appears as if the Illinois EPA "granted approval of the eligible remediation costs" on March 6, 2019.

In your letter, you state that you intend to amend your 2016 return to reflect the PROPERTY Zone site remediation tax credit. In order to claim this credit, you must have received Illinois EPA approval of the remediation costs prior to July 12, 2016. If you intend to claim the credit on an amended 2016 tax return, you will be required to file an amended 2016 Schedule 1299-D and attach a copy of proof of an approval form issued by the Illinois EPA issued during that tax year. The March 6, 2019 Illinois EPA letter does not appear to meet this requirement. If you do not have other proof that the eligible remediation costs were approved by the Illinois EPA during the 2016 tax year, prior to July 12, 2016, or do not meet any of the other requirements outlined above, then you cannot claim the PROPERTY Zone site remediation tax credit found in Section 201(n) of the IITA. If you do have such proof and meet all of the other applicable requirements, then please file an amended 2016 tax return and 2016 Schedule 1299-D according to the 2016 instructions.

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 regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Michael D. Mankowski
Associate Counsel - Income Tax