

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 100 Section 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring on or after December 31, 1986 (IITA Section 207)</b>
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**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES  
OCCURRING ON OR AFTER DECEMBER 31, 1986**

**Section 100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986 (IITA Section 207)**

- a) IITA Section 207(a) provides for carryover deductions of any losses that result *after applying all of the modifications provided for in Section 203(b)(2), (c)(2) and (d)(2) and the allocation and apportionment provisions of Article 3 of the Act.*
- b) Years to Which Illinois Net Losses May be Carried
  - 1) In General. Under IITA Section 207(a)(2), an Illinois net loss incurred in a tax year ending on or after December 31, 1999 and prior to December 31, 2003 may be carried back to the two preceding tax years or carried forward to the 20 succeeding tax years. Under IITA Section 207(a)(3), for any taxable year ending on or after December 31, 2003, the loss is allowed as a carryover to each of the 12 taxable years following the taxable year of the loss. For tax years ending prior to December 31, 1999, IITA Section 207(a)(1) provides that a carryback or carryover deduction is allowed in the manner allowed under Internal Revenue Code section 172. The federal rules concerning the years to which a loss may be carried are contained in IRC section 172(b) and in Treas. Reg. Sec. 1.172-4(a)(1). These rules, as now in effect or hereafter amended, are followed for Illinois income tax purposes and apply to corporations, partnerships, trusts and estates. In general, for Illinois net losses incurred in tax years beginning prior to August 6, 1997, the net loss is first carried back to the three preceding taxable years and then is carried over to the 15 succeeding taxable years. For Illinois net losses incurred in tax years beginning on or after August 6, 1997 and ending prior to December 31, 1999, the loss generally is first carried back to the two preceding tax years and then is carried forward to the 20 succeeding tax years. In taxable years ending prior to December 31, 1999, special provisions applied to regulated transportation companies, financial institutions, product liability losses and other entities or situations, and the provisions in IRC section 172(b) and the related Treasury Regulations relating to the years to which a loss incurred in one of those years may be carried are followed.
  - 2) Specific Rules for Losses Incurred in Taxable Years Ending Prior to December 31, 1999. IITA Section 207(a)(1) provides that, for losses incurred in *any taxable year ending prior to December 31, 1999, the loss is allowed as a carryover or*

*carryback deduction in the manner allowed under IRC section 172.* Pursuant to this provision:

- A) For losses incurred in taxable years beginning prior to August 6, 1997, a loss generally is first carried back to each of the 3 taxable years preceding the taxable year in which the loss was incurred and then to each of the 15 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(A), as in effect prior to enactment of P.L. 105-34.)
- B) For losses incurred in taxable years beginning after August 5, 1997, a loss generally is first carried back to each of the 2 taxable years preceding the taxable year in which the loss was incurred and then to each of the 20 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(A), as in effect after enactment of P.L. 105-34.)
- C) Special carryover periods allowed under IRC section 172(b) for specific kinds of losses or taxpayers also apply. For example:
  - i) "Specified liability losses" may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(C).)
  - ii) For losses incurred in taxable years beginning after December 31, 1986, and ending before January 1, 1994, bad debt losses of commercial banks may be carried back to each of the 10 taxable years preceding the taxable year in which the loss was incurred and to each of the 5 taxable years following the taxable year in which the loss was incurred. (From IRC section 172(b)(1)(D).)

c) Election to Forgo Carryback Period

- 1) For losses incurred in tax years ending prior to December 31, 2003, IITA Section 207(a-5)(A) allows the taxpayer to *elect to relinquish the entire carryback period with respect to the loss*. The election is made on the taxpayer's return for the taxable year in which the loss is incurred. The election may be made only on or before the due date (including extensions of time) for filing the return. If an election is made, the loss is carried forward and deducted only in years subsequent to the taxable year in which the loss was incurred. The *election, once made, is irrevocable*. (IITA Section 207(a-5)(A))
- 2) If the election is made on any combined return filed in accordance with IITA Section 502(e), the election will be considered to be in effect for all eligible members of the combined group filing the return for the taxable year for which the election is made.
- 3) If the timely return for the taxable year reflects Illinois income and:
  - A) a finalized federal change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on an

amended return or form prescribed by the Department within the 120 day time period prescribed by IITA Section 506(b);or

- B) an Illinois audit or other Illinois change eliminates Illinois income thereby creating an Illinois net loss for the year, the taxpayer may make the election to relinquish the entire carryback period for the Illinois net loss on forms prescribed by the Department at the time the loss is first reported to Illinois.

- d) Portion of Illinois Net Loss That Is a Carryback or a Carryover to the Taxable Year in Issue. Pursuant to IITA Section 207(a-5)(B), *the entire amount of a loss is carried to the earliest taxable year to which the loss may be carried. The amount of the loss, which is carried to each of the other taxable years, is the excess, if any, of the amount of the loss over the sum of the deductions for carryback or carryover of the loss allowable for each of the prior taxable years to which the loss may be carried.* This is illustrated in the following Example.

EXAMPLE: A taxpayer that makes its return on the calendar year basis has an Illinois net loss for 1986. Under the provisions of IRC section 172(b) as in effect in that year, the entire net loss for 1986 may be carried back to 1983. The amount of the carryback to 1984 is the excess of the 1986 loss over the net income for 1983. The amount of the carryback to 1985 is the excess of the 1986 loss over the aggregate of the net incomes for 1983 and 1984. The amount of the carryover to 1987 is the excess of the 1986 loss over the aggregate of the net incomes for 1983, 1984, and 1985, etc.

- e) Carryover of Pre-12/31/86 Losses and Post-12/30/86 Losses. Net operating losses incurred prior to December 31, 1986, can be carried over into years in which Illinois net losses (incurred on or after December 31, 1986) are also carried. In these cases, the losses incurred in tax years ending prior to December 31, 1986 are treated as an adjustment to taxable income (i.e., before apportionment) while the losses incurred in tax years ending after December 30, 1986 are subtracted in computing Illinois net income (i.e., after apportionment). This is illustrated in the following Example.

EXAMPLE: Corporation A is a calendar year taxpayer. It has no partnership income and no nonbusiness income. In 1985, it reported a federal net operating loss of \$1,000, and on its Illinois return for 1986, it reported an Illinois net loss of \$50, neither of which could be carried back to prior years due to losses existing in those years. In 1987, A had federal taxable income (before special deductions) of \$200, and Illinois addition modifications of \$100. Corporation A would compute its Illinois net income in 1987 as follows: The \$1,000 net operating loss from 1985 would offset the \$200 of 1987 federal taxable income and would offset the \$100 of 1987 Illinois addition modifications. In 1988, Corporation A would have remaining \$700 of net operating loss carryover from 1985 and \$50 of Illinois net loss carryover from 1986.

- f) Special Rules

- 1) IITA Section 207(b) provides that *any loss determined under subsection (a) of this Section is carried back or carried forward in the same manner for purposes of both the regular income tax imposed by IITA Section 201(a) and (b) and the personal property replacement income tax imposed under IITA Section 201(c) and (d).*

- 2) For the carryforward of losses incurred prior to certain corporate or partnership reorganizations or acquisitions, see Section 100.4500.
- 3) IITA Section 207(a) provides that losses that may be carried over and deducted in other years are those losses that result after the modifications of IITA Section 203(b)(2), (c)(2) and (d)(2) are made, and after the allocation and apportionment rules of IITA Article 3 are applied. Accordingly:
  - A) No exemption allowed under IITA Section 204 is taken into account in computing a loss that may be carried over and deducted under IITA Section 207; and
  - B) No deduction for any loss carried over pursuant to IITA Section 207 is taken into account in computing a loss that may be carried to and deducted in another taxable year under IITA Section 207.
- 4) Subchapter S Corporations and Partnerships
  - A) IITA Section 207(a) allows the carryover of losses that result after the modifications of IITA Section 203(b)(2) and (d)(2) are made. IITA Section 203(b) applies to subchapter S corporations and IITA Section 203(d) applies to partnerships. Accordingly, IITA Section 207 allows subchapter S corporations and partnerships carryover deductions for losses incurred.
  - B) Neither IITA Section 207 nor IRC section 172 distinguishes between subchapter S corporations and corporations governed by subchapter C of the Internal Revenue Code. IRC section 1363(b)(2) provides that no net operating deduction allowable under IRC section 172 is allowed in the computation of taxable income of a subchapter S corporation and IRC section 1371(b) prohibits any carryforward or carryback between a taxable year in which a corporation is a subchapter S corporation and a taxable year in which it is not. Neither IRC section 1363 nor IRC section 1371 is applicable to the carryover and deduction of losses under IITA Section 207. Accordingly, subject to the other provisions of this Section, a loss incurred in a taxable year in which a corporation is a subchapter S corporation shall be carried to and deducted in any taxable year in which it is not a subchapter S corporation in the same manner as if the corporation were a subchapter S corporation in that year, and a loss incurred in a taxable year in which a corporation is not a subchapter S corporation may likewise be carried to and deducted in any taxable year in which it is a subchapter S corporation.

EXAMPLE: X Corporation is a subchapter S corporation throughout the calendar year 1998. Effective for 1999, X Corporation's subchapter S election is terminated. In 2000, X Corporation incurs an Illinois loss. Unless X Corporation elects to carry the loss forward only, the loss is first carried back and deducted in 1998 and only the amount of loss in excess of 1998 taxable income is carried to 1999 and subsequent years.

- C) Losses carried over pursuant to IITA Section 207 are deductible only under that Section, and that Section allows the deduction only of losses that result when the taxpayer's own taxable income is less than zero.

Accordingly, no loss carried over and deducted by a partnership or subchapter S corporation in a taxable year may reduce the taxable income of any partner or shareholder of the taxpayer in that taxable year.

- 5) Suspension of Illinois Net Loss Deductions. *In the case of a corporation (other than a subchapter S corporation), no carryover deduction is allowed under IITA Section 207 for any taxable year ending after December 31, 2010 and prior to December 31, 2012, and no carryover deduction may exceed \$100,000 for any taxable year ending on or after December 31, 2012 and prior to December 31, 2014; provided that, for purposes of determining the taxable years to which a net loss may be carried under IITA Section 207(a), any taxable year for which a deduction is disallowed under this subsection (f)(5), or for which the deduction would exceed \$100,000 if not for this subsection (f)(5), is not counted. (IITA Section 207(d))*

EXAMPLE: Pursuant to this subsection (f)(5), in determining the taxable years to which a loss incurred by C Corporation in its taxable year ending December 31, 2009 may be carried:

- A) the taxable year ending December 31, 2011 is not counted even if C Corporation's net income for the year is a negative;
  - B) the taxable year ending December 31, 2012 is not counted if C Corporation's net income (before any net loss deduction) is greater than \$100,000; and
  - C) the taxable year ending December 31, 2012 is counted if C Corporation's net income (before any net loss deduction) is \$100,000 or less or is negative.
- 6) Holders of Residual Interests in Real Estate Mortgage Investment Companies (REMICs)
- A) Under IRC section 860E(a)(1), the taxable income of a holder of a residual interest in a REMIC may not be less than the amount of "excess inclusion" income from the REMIC for that taxable year. If the residual interest holder's federal net income would otherwise be less than the excess inclusion amount, the residual interest holder carries over the excess of its actual federal taxable income over the amount of its federal taxable income computed without regard to IRC section 860E(a)(1) as a net operating loss under IRC section 172.
  - B) IITA Prior to PA 97-507. Under IITA Section 207, the net loss of a taxpayer (other than an individual) for a taxable year is its taxable income for the year, as properly reportable for federal income tax purposes, after modifications in IITA Section 203(b)(2), (c)(2) and (d)(2). Under IITA Section 203(b)(2)(D) and (c)(2)(D), corporations, trusts and estates add back to their taxable income any net operating loss deduction claimed under IRC section 172 for a loss incurred in a taxable year ending on or after December 31, 1986. As a result, a corporation, trust or estate whose excess inclusion amount exceeded its federal taxable income computed without regard to IRC section 860E(a)(1) for a taxable year would receive

no tax benefit from the deductions or losses that caused the excess, because those deductions or losses could not reduce its federal taxable income in the year incurred and any resulting IRC section 172 carryover deduction would need to be added back to taxable income in the carryover years under IITA Section 203(b)(2)(D) or (c)(2)(D).

- C) In order to allow a corporation the benefit of deductions otherwise disallowed by IRC section 860E(a)(1) and IITA Section 203(b)(2)(D) and (c)(2)(D), PA 97-507 added subsection (e) to IITA Section 207 to allow a residual interest holder an Illinois net loss carryover computed in the same manner as the federal net operating loss carryover allowed under IRC section 860E. IITA Section 207(e) provides that, *in the case of a residual interest holder in a REMIC subject to IRC section 860E, the net loss in IITA Section 207(a) is equal to:*
- i) *the amount computed under IITA Section 207(a), without regard to IITA Section 207(e) or, if that amount is positive, zero;*
  - ii) *minus an amount equal to the amount computed under IITA Section 207(a), without regard to IITA Section 207(e), minus the amount that would be computed under IITA Section 207(a) if the taxpayer's federal taxable income were computed without regard to IRC section 860E and without regard to IITA Section 207(e).*
- D) IITA Section 207(e) applies to all taxable years and is exempt from automatic sunset under IITA Section 250.

(Source: Amended at 42 Ill. Reg. 17852, effective September 24, 2018)