

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.2360 Illinois Net Losses and Illinois Net Loss Deductions for Losses of Cooperatives Occurring on or After December 31, 1986 (IITA Section 203(e)(2)(F))

TITLE 86: REVENUE

**PART 100
INCOME TAX**

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

Section 100.2360 Illinois Net Losses and Illinois Net Loss Deductions for Losses of Cooperatives Occurring On or After December 31, 1986 (IITA Section 203(e)(2)(F))

- a) Under Internal Revenue Code section 1382(b), cooperatives are allowed to deduct distributions of profits made to their members, or "patronage dividends". The deduction may only be taken against a cooperative's taxable income from transactions with its members, or "patronage income". If patronage income is negative, the cooperative may not offset that "patronage loss" against its income from transactions with nonmembers, or "nonpatronage income", but instead carries the patronage loss over as a net operating loss under IRC section 172 to offset patronage income in the carryover year. (See *Farm Service Cooperative v. Commissioner*, 615 F.2d 1235 (8th Cir. 1980).)

- b) IITA Prior to PA 96-932. Under IITA Section 203(b), the base income of a cooperative 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). IITA Section 203(b)(2)(D) requires a cooperative to add back to its 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 cooperative that incurred a patronage loss in the same year it had positive nonpatronage income would receive no tax benefit from the deductions or losses that caused the patronage loss, because the patronage loss could not offset its nonpatronage income in the year it was incurred and any deduction of a carryover of the loss would be added back to taxable income in the carryover years under IITA Section 203(b)(2)(D).

- c) PA 96-932 amended IITA Section 203(e)(2)(F) to provide that the taxable income of a cooperative is *determined in accordance with the provisions of IRC sections 1381 through 1388, but without regard to the prohibition against offsetting losses from patronage activities against income from nonpatronage activities*. However, IITA Section 203(e)(2)(F) provides that a cooperative *may make an election to follow its federal income tax treatment of patronage losses and nonpatronage losses. In the event the election is made, the losses are computed and carried over in a manner consistent with IITA Section 207(a) and apportioned by the apportionment factor reported by the cooperative on its Illinois income tax return filed for the taxable year in which the losses are incurred*. PA 96-932 provided that it is declaratory of existing law.

d) Making the Election. The election to follow the federal income tax treatment of patronage losses is made by the cooperative checking the appropriate box on Schedule INL, Illinois Net Loss Adjustment for Cooperatives and REMIC Owners, on its original return for its first taxable year ending on or after December 31, 2010 to which it intends the election to apply. The election may be made for years ending prior to December 31, 2010 by filing an amended return for any open year, claiming a deduction under IITA Section 207 for any patronage loss carryover to that year, as allowed under PA 96-932 for those making the election.

- 1) Effect of Making the Election. If an election has been made, patronage losses carried forward under subsection (c) may be used to offset only patronage income, and nonpatronage losses carried forward under subsection (c) may be used to offset only nonpatronage income. *The election is effective for all taxable years, with original returns due on or after the date of the election. Once made, the election may only be revoked upon approval of the Director.* (IITA Section 203(e)(2)(F)) Requests for approval of a revocation of the election are made by asking for a private letter ruling approving the revocation under 2 Ill. Adm. Code 1200.110. The request shall give the reasons for the request and state the first taxable year to which the election will no longer apply. The request will be granted or denied by private letter ruling. If a request is denied, the taxpayer may challenge the denial by filing a return in accordance with the election and then filing an amended return that does not apply the election and claiming a refund for overpayment.
- 2) Effect of Revoking an Election. If an election is revoked, patronage and nonpatronage losses incurred in taxable years to which the election applied under subsection (c), and that are otherwise available to carry over, may be used to offset both patronage and nonpatronage income in taxable years ending on or after the date stated in the private letter ruling request. A cooperative that has revoked an election under this subsection (d) may again make the election for any taxable year after the first taxable year to which the revocation applied. If a subsequent election is made under this subsection (d)(2), any patronage or nonpatronage loss carryover under subsection (c) from a taxable year to which the earlier election applied may be used only to offset patronage or nonpatronage income, respectively, in any taxable year to which the new election applies.

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