

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9400 Credits and Refunds (IITA Section 909)

SUBPART BB: CREDITS AND REFUNDS

Section 100.9400 Credits and Refunds (IITA Section 909)

- a) In General. The Department, within the applicable period of limitations for a claim for refund, shall credit the amount of any overpayment, including interest allowed on the overpayment, against any liability for tax imposed under the IITA or any other Act administered by the Department on the person who made the overpayment, and it shall refund the balance to that person. (See IITA Section 909(a) and Section 2505-275 of the Department of Revenue Law [20 ILCS 2505/2505-275].)

- b) Credit Against the Estimated Tax. A taxpayer may elect to have any portion of any overpayment shown on an original or amended return for a taxable year applied against the taxpayer's estimated tax liability for a subsequent taxable year. (See IITA Section 909(b).) The election shall be made on the form and in the manner prescribed by the Department, must be made before the overpayment is refunded, and, once an election is made, the election may not be altered to reduce the amount credited or to change the taxable year to which the credit will be applied. After an election is properly made, the Department shall apply the amount of the overpayment against other liabilities of the taxpayer and apply only the balance (if any) of the overpayment against the taxpayer's estimated tax liability. (See IITA Section 909(a) and (b) and Section 2505-275 of the Department of Revenue Law .) If the Department applies a portion of an overpayment against a liability other than the estimated tax liability to which the taxpayer elected to apply the overpayment or refunds some or all of the amount that the taxpayer had elected to apply against its estimated tax liability, the Department shall issue a notice to the taxpayer stating the amount so applied and the liability against which the application was made, or the amount so refunded, and no penalty for late payment of estimated taxes under IITA Section 804(a) or for underpayment of tax under IITA Section 1005(a) shall accrue with respect to the amount so applied or refunded, if the full amount of the liability that was due as of the date the notice was issued is paid prior to the later of:
 - 1) 30 days after the date the notice is issued; or
 - 2) the unextended due date of the return for the year for which the estimated tax credit was requested or, in the case of the penalty for late payment of estimated taxes, the due date of the next estimated tax installment (if any) due after the date of the notice.

- c) Interest on Overpayments
 - 1) General Rule. Subject to the provisions of this subsection (c), interest shall be allowed and paid upon any overpayment in respect of the tax imposed by the Act at a rate determined by reference to IITA Section 909(c). When there is a dispute between a taxpayer and the Department regarding the amount of interest that is due, see subsection (f)(6).

- 2) **Overpayments.** The overpayment in respect of any tax imposed by the Act includes any penalties assessed under IITA Section 1002(e) and any interest assessed on the tax or on a penalty under IITA Section 1003. For this purpose, an overpayment is any creditable or refundable portion of taxes, penalty, or interest that was previously paid.
- 3) **Date of Overpayment**
 - A) The date of overpayment is the date of payment of any tax that thereafter becomes or is determined to be refundable or creditable for the taxable year, except as provided in subsection (c)(3)(B). There can be no overpayment of tax prior to the last day prescribed for filing the return, nor until the entire tax liability for the taxable year is satisfied, nor until the return is filed for the taxable year. Therefore, the date or dates of overpayment are the date of payment of the first amount that (when added to previous payments) exceeds the tax liability (including any interest or penalties) for the taxable year and the date or dates of any subsequent payments made with respect to the tax liability, which in any event cannot be earlier than the last day prescribed for filing the return for the year, nor earlier than the date the return is filed. The "last day prescribed for filing the return", for purposes of this subsection (c)(3)(A) and subsection (d) is the original due date, not the extended due date, if any.
 - B) In the case of a federal change due to the final allowance of a carryback from a loss year ending prior to December 31, 1986, under the provisions of the federal Internal Revenue Code, the date of overpayment shall be as of the close of the taxable year in which the deduction, losses, or other item or event occurred that created the federal carryback, or the date when the return for the carryback year is filed, whichever is later.
 - C) In the case of a federal change due to the final allowance of a carryback or carryforward from a loss year ending on or after December 31, 1986, and in the case of an Illinois change due to the carryforward or carryback of an Illinois net loss, Illinois investment credit, jobs credit, replacement tax credit, or other credit (other than estimated or tentative tax credit) from a loss or credit year ending on or after December 31, 1986, the date of overpayment shall be the date the claim for refund is filed, except that, if any overpayment is refunded within 3 months after the date the claim for refund is filed, determined without regard to processing by the Comptroller, no interest shall be allowed on the overpayment.
 - D) Beginning January 1, 1994, *if a claim for refund relates to an overpayment attributable to a net loss carryback as provided by Section 207 of the Illinois Income Tax Act, the date of overpayment shall be the last day of the taxable year in which the loss was incurred.* [35 ILCS 735/3-2(d)]
- d) **Period for Which Interest is Allowable**
 - 1) **In General**

- A) Prior to January 1, 1994, interest shall be allowed and paid from the date of overpayment to a date determined by the Director or his or her designee, which shall be not more than 30 days prior to the date of any refund or credit. However, no interest shall be allowed on the amount of tax overpaid if that amount is refunded or credited within the later of 3 months after the last date prescribed for filing the return of the tax or within 3 months after the return was filed, determined without regard to processing by the Comptroller.
 - B) On and after January 1, 1994, interest shall be allowed and paid in the manner prescribed under the Uniform Penalty and Interest Act [35 ILCS 735] (UPIA).
- 2) Estimated Tax for Succeeding Year. Notwithstanding any other provision of this Section, if a taxpayer elects, under subsection (b):
- A) on a timely filed original return, to have all or part of an overpayment shown on the return applied as an estimated tax payment for the succeeding taxable year, no interest shall be allowed on that portion of the overpayment so credited;
 - B) on an original return that is filed after the due date for filing that return (including extensions), or on an amended return, to have all or part of an overpayment shown on the return applied as an estimated tax payment for any subsequent taxable year, no interest shall be allowed on that portion of the overpayment so credited for any period after the date on which the election is made;
 - C) by the filing of any other form or statement prescribed by the Department requesting to have all or part of a refund requested on a previously filed original or amended return applied against an estimated tax obligation, no interest shall be allowed on that portion of the overpayment so credited for any period after the date on which the election is made.
- e) Examples. This Section may be illustrated by the following examples:

EXAMPLE 1

T, a calendar year taxpayer, receives an extension to June 30, 1972 to file a 1971 return. On April 15, 1972, T files a tentative return pursuant to IITA Section 602(a) showing an estimated liability of \$500 that has been paid through withholding, estimated tax payments, or as a payment with the tentative return of the tax properly estimated to be due. On June 15, 1972, T files a 1971 return showing a tax liability of \$3,000 including interest for late payment and remits \$2,500 that in addition to the \$500 paid as indicated, satisfies the liability shown on the return. On August 15, 1972, T files a claim for refund for \$1,500 as an overpayment of 1971 tax. The date of overpayment for the computation of any interest would be June 15, which is the date when payments first exceeded liability, as now shown as a result of the claim for refund, and that is the date when the return for the taxable year was first filed. See Example 2 for application of the 3-month rule.

EXAMPLE 2

Assume the same facts as in Example 1 and that T's refund claim of \$1,500 was allowed and paid on September 1. No interest would be allowed because the refund was made within 3 months after June 15, the date the return for the taxable year was filed. If the refund was made on October 1, interest would be allowed from June 15 to a date that would be not more than 30 days prior to October 1.

EXAMPLE 3

W, a calendar year taxpayer, files a return on March 7 and claims a refund as a result of excess withholding. The refund is made July 1. No interest would be allowed because the refund was made within 3 months after April 15, which is the later of the last day prescribed for filing the return or the date the return was filed. If, with the same facts, the refund is made July 28, interest would be allowed from April 15 (the date of overpayment).

EXAMPLE 4

X, a calendar year corporation, sustains a federal net operating loss in 1973. X files a federal claim for refund, carrying the loss back to 1970 and receives a refund of federal taxes for 1970 based on the net operating loss carryback. (Refer to subsection (f)(4) respecting a federal application for tentative carryback adjustment.) X then files Form IL-1120-X claiming an overpayment of 1970 Illinois tax as a result of a federal change in its reported taxable income for 1970. The date of overpayment would be December 31, 1973, the close of the taxable year in which the federal net operating loss occurred (provided an original 1970 IL-1120 had been filed by this date).

f) Refund Claim

- 1) **In General.** A claim for refund of an overpayment of income tax may be filed with the Department only if a return for the taxable year for which the refund is claimed has been filed. An original return does not constitute a claim for refund under IITA Section 909(d) and (e) of the Act calling for consideration, but may qualify as an extension of the limitations period for filing a claim for refund under Section 100.9410(c)(2). A separate claim shall be filed for each taxable year for which an income tax overpayment was made. Every claim for refund shall be in writing, shall be on the appropriate form prescribed by the Department, and (using attachments if necessary) shall state the specific grounds upon which it is founded.
- 2) **Evidence of Claim Filing.** In preparing and filing a claim on either an amended return before the return due date, or after that date has passed on Form IL-843, Form IL-1040-X, or Form IL-1120-X, a taxpayer may attach two photocopies of page I of the original executed claim being filed as a pro forma claim receipt form identifying the claim with a written request that one photocopy be returned to the claimant as a receipt. Upon the Department's receiving the claim and the two photocopies of page I of the claim if attached, the Director's designee shall place on the claim the Department's Date Received Stamp and initial the stamp in ink, after which one photocopy shall be removed and mailed to the claimant for use as a receipt. In absence of a photocopy of the claim form (so stamped and initialed) being attached to the original claim or being produced by the claimant,

copies of the Department's records certified true by the Director or his or her designee shall be deemed prima facie correct to show whether or not a claim was filed and, if so, the date upon which it was received by the Department. Furthermore, the Department's records as to the date that the claim was received in the Department's mail room shall be prima facie evidence that the postmark date on the claim was 10 days prior to that date.

- 3) Amended Return as Claim; Limited Use. In an instance in which a return for the taxable year is filed early, the latest received by the Department of any further return or amended return filed by the taxpayer on or before the last day prescribed for timely filing shall constitute and be accepted as the return for the taxable year. Therefore, if a return showing a tax liability for the taxable year has been filed with the Department and the tax paid and the due date prescribed for filing that return has not passed, any claim for refund filed prior to that date shall be made by the filing of a further return marked "CORRECTED", showing the amount of the tax overpayment to be refundable. Form IL-1040-X and Form IL-1120-X shall be used for this purpose by individuals and corporations.
- 4) Claim Form; Federal Change. If, on the other hand, the due date for filing a return has passed and under the Act an overpayment based on a federal change has arisen, in addition to meeting the requirements of IITA Section 506 a claim for refund based on the federal change should be made by the filing (following the instructions thereon) of a notice of the change on Illinois Form IL-843, Form IL-1040-X, or Form IL-1120-X, as appropriate. To meet the requirements of IITA Section 909(d) for stating specific grounds, there should be within the form or on an attachment an explanation in detail sufficient to show the nature of the items of change or alteration. If helpful or otherwise appropriate to show the grounds and to compute the amount claimed as refundable, another return marked "AMENDED" may be attached or filed in connection with the Form IL-843. Further, when a claim for refund is filed based on a federal change giving rise to an overpayment, documentation in form of the original federal documents or correspondence furnished the taxpayer or other satisfactory proof in connection with the change (or true and correct fully legible photocopies) shall be attached evidencing that the federal change represents an agreed to or final federal Internal Revenue Service (or court imposed) acceptance, recomputation, redetermination, change, tentative carryback adjustment or settlement, and it shall be stated or shown that no contest is pending. In this connection, the payment received as the result of the filing of an application for a tentative carryback adjustment (on Form 1045 or Form 1139) pursuant to IRC section 6411 is a change reportable under IITA Section 506. A claim for refund of an overpayment of Illinois income tax occasioned by the payment of a tentative carryback adjustment may be filed on Form IL-1040-X and Form IL-1120-X. A premature or incomplete claim on Form IL-843, Form IL-1040-X, or Form IL-1120-X shall not constitute a claim for refund within the meaning of IITA Section 909(d), nor for purposes of commencing the 6-month period in subsection (g). Upon any claim being received and identified as premature, incomplete, or otherwise defective under the Act, the Department, as soon as practicable, shall notify the taxpayer in writing to enable, if possible, the timely submission of a mature and perfected claim.
- 5) Claim Form; No Federal Change. If a return showing tax due for the taxable

year has been filed and the tax paid and an overpayment based on a purely Illinois change has arisen and is not based to any extent on a change in federal income tax liability, any claim for refund should be made by the filing (following the instructions thereon) of Illinois Form IL-843, Form IL-1040-X (individuals), or Form IL-1120-X (corporations), as appropriate, using, if necessary, an attachment to set forth in detail each specific ground for refund. If appropriate, another return marked "AMENDED" may be attached to or filed in connection with the Form IL-843. Pertaining to purely Illinois changes, Forms IL-843, IL-1040-X and IL-1120-X are designed for use not only to claim a refund of tax overpayment, but also to report an increase in the amount of previously reported or determined income tax liability for the taxable year.

- 6) **Informal Claim Not Permitted; Disputes Regarding the Amount of Interest Due.** In all cases in which the original return due date has passed, claims for refund shall be filed using the following forms, as appropriate: Form IL-843, Form IL-1040-X and Form IL-1120-X. These forms may also be used by taxpayers to claim additional interest when there is a dispute regarding the amount of interest that is due from the Department relative to a refund. The claims for additional interest must be filed either within the 60-day protest period for claim denials (see IITA Section 910) or within the limitations period for filing claims for refund for the taxable year for which the interest is due (see IITA Section 911). See 86 Ill. Adm. Code 200.120 for procedure on protest. An "informal claim", such as a letter from the taxpayer, is insufficient for the purpose of establishing or extending any of the limitations in IITA Section 911 or in subsections (g) and (h) of this Section.
- g) **Notices of Refund or Denial**
 - 1) **In General.** The Department shall examine a claim for refund, in connection, as appropriate, with the return for the taxable year to which it relates, as soon as practicable after it is filed to determine the correct amount of tax and the amount of any refundable overpayment to which the claimant-taxpayer may be entitled. If, for the taxable year involved, the Department finds the claimant entitled to a refund in any amount, it shall issue an appropriate notice of refund, abatement, or credit (see subsection (b)). If the Department has failed to approve or deny the claim before the expiration of 6 months after the date the claim was filed, the claimant may nevertheless thereafter file with the Department a written protest addressed in accordance with the instructions in the applicable claim form (IL-1040-X, IL-1120-X, or IL-843). If a protest is filed, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the date the request is filed.
 - 2) **Notice of Denial; Notice of Deficiency as Denial.** However, if the Department finds that the claim for refund is not allowable and proposes to issue a notice of denial or, if taking into account the claim, nevertheless finds adjustments that are a basis for proposing an increase in the amount of tax liability over that shown on the return, or decreasing it by an amount less than that claimed as refundable, the Department shall issue a notice of deficiency under IITA Section 904(c) (see Section 100.9300(a)) or it shall issue a notice of denial or partial denial of the claim. In the event that a notice of deficiency is issued that indicates that the claim for refund was considered, the notice of deficiency shall constitute (concurrently) a notice of denial of the claim. Note that, in the absence of a

written protest of the notice of deficiency or denial (see 86 Ill. Adm. Code 200.120(b)), the Department's final action is not an administrative decision subject to judicial review (except as to jurisdictional questions) under the provisions of the Administrative Review Law [735 ILCS 5/Art. III] (see Section 100.9600).

- h) **Effect of Denial.** Denial of a claim becomes final 60 days after the denial is issued (irrespective of whether the claimant is outside the United States), except to the extent (in whole or part) that the claimant in the meantime filed a protest, as provided by IITA Section 910 (see 86 Ill. Adm. Code 200.120(b)), against the denial of amounts claimed as refundable. In the absence of a written protest of the denial of the claim for refund, the Department's final action is not an administrative decision subject to judicial review (except as to jurisdictional questions) under the provisions of the Administrative Review Law (see 86 Ill. Adm. Code 100.9600).
- i) **Time for Protest.** If, after a claim for refund is denied by issuance of a notice of denial (see Section 100.9400(g)(2)), a written protest against the denial is filed by the taxpayer within 60 days after the denial is issued (irrespective of whether the taxpayer is outside the United States), the Department shall reconsider the denial and, if requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing, as provided for in IITA Section 914. See 86 Ill. Adm. Code 200 for protest and hearing procedures.

(Source: Amended at 40 Ill. Reg. 15575, effective November 2, 2016)