

Illinois Department of Revenue
Roger D. Sweet, Director
101 West Jefferson Street
Springfield, Illinois 62794

INFORMATIONAL BULLETIN FY88-1

TO: All Practitioners

SUBJECT: Illinois Income Tax Net Loss Carryback
New Form IL-1120X-PY, for Amending Tax Years Ending Before
December 31, 1986 CATERPILLAR/SEARLE Supreme Court Decision
Rendered 6/10/87

Beginning with tax years ending on or after 12/31/86, the Illinois Income Tax Act (as amended by P.A. 84-1042) decouples from federal provisions for computing net operating losses and net operating loss deductions for all taxpayers except individuals. That is, for loss years ending 12/31/86 or after, Illinois will have its own provisions for the computation of Illinois net losses and Illinois net loss deductions. The new law provides that if, after applying all the Illinois addition and subtraction modifications and after applying all the allocation and apportionment provisions, the taxpayer's net income results in a loss, the loss will be allowed as an Illinois net loss carryback or carryover. The following information explains how to file claims for refunds attributable to Illinois net loss carrybacks and how to amend pre-1986 corporate returns for ANY state or federal change.

CORPORATE FILERS

To amend tax years ending prior to 12/31/86, you should use Form IL-1120X-PY (new 5/87) for any federal or Illinois change. Use the Form IL-1120X (R-12/86) that is currently available to amend only tax years ending 12/31/86 or later. However, the Department will accept IL-1120X's (R-12/86) amending tax years prior to 12/31/86 if the amended returns were filed prior to the issuance of this bulletin.

In completing Form IL-1120X-PY to carry back a 12/31/86-or-after Illinois net loss, please pay particular attention to the following instructions.

With regard to a federal NOL occurring on or after 12/31/86 and carried for federal purposes, to the extent it reduces line 1 of your Illinois return, you must add it back on line 2(d).

In order to compute the amount of ILLINOIS NET LOSS to be carried, you must complete your 1986 IL-1120 through part IV, line 1. In general you may carry such a loss back three years and forward 15 years. Illinois net loss deductions are subtracted in the carry year on the IL-1120X-PY, at Part I, line 9 for income tax, and at Part IV, line 8 for the replacement tax.

Federal consolidated filers previously could only carry forward their

net operating losses and could not carry them back. This limitation was rescinded statutorily in 1985 for losses incurred on or after 12/31/86. In addition, the Illinois Supreme Court's decision of 6/10/87 had the effect of rescinding it for all tax years prior to 12/31/86 (see Caterpillar/Searle Illinois Supreme Court Decision below).

With regard to unitary business groups, you should file an IL-1120X-PY for each previously filed return to which you are carrying a 12/31/86-or-after Illinois net loss.

Partnerships, S corporations, trusts, and estates now also will calculate Illinois net losses (partnerships, and S corporations will receive the benefit of loss deductions for the first time, since for federal purposes loss deductions do not apply). To carry back an Illinois net loss for these taxpayers, you should file Form IL-843 and attach a worksheet showing: the taxable year of the loss being carried; the amount of the Illinois net loss being carried; the base income allocable to Illinois in the carry year; the amount of Illinois net loss being applied to each carry year; and the new income tax and (if applicable) replacement tax for each carry year. In the case of trust and estate returns, if you have a federal NOL occurring on or after 12/31/86, to the extent this reduces line 1 of the Illinois return, you must add it back in calculating base income in the carry year.

CATERPILLAR/SEARLE ILLINOIS SUPREME COURT DECISION

The Illinois Supreme Court ruled on 6/10/87 that a 1977 amendment to the Illinois Income Tax Act (IITA) which precluded affiliated corporations electing to file a federal consolidated return from carrying back net operating losses for Illinois purposes violated the uniformity clause of the Illinois Constitution (clause 2, Article IX) by arbitrarily treating one class of corporations differently from other corporations. The discriminatory classification no longer exists in the statute as it was rescinded in 1985 (P.A. 84-1042). The classification problem was remedied by allowing all corporations to carry back losses.

Unless there is a rehearing, the Court's ruling is considered final and refunds will eventually be paid to all taxpayers with claims properly filed within the statute of limitations, although the timing of the refunds will depend on appropriations by the Illinois General Assembly.

Taxpayers that do not presently have claims pending with the Department should determine whether a claim or reclaim would be within the statute of limitations. Generally, any such claims must be filed no later than three years and 20 days after the last day of the taxable year in which the loss which generated the carryback occurred (86 Ill. Adm. Code 100.5600). For example, if the loss year ends 12/84, then the taxpayer has until January 20, 1988 to file a claim for refund of 1981 tax based on a carryback of the 1984 loss to 1981.

Taxpayers that have already carried a loss forward will not, as a result of the Court's decision, now be required by the Department to carry that loss back, although they may choose to do so. Of course, a taxpayer who does choose to carry such a loss back will be required to

amend the carryforward year as well as the carryback year.

QUESTION AND FORMS

If you have questions or need forms, please contact us. Our address and telephone numbers are at the top of this bulletin. You may want to refer to the Department's net loss regulations, available upon request by writing to: Illinois Department of Revenue, P.O. Box 19010, Springfield, Illinois 62794-9010.

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