

IT 25-0013-GIL 12/11/2025 NET LOSSES

IITA Section 405 does not permit net loss carryovers when a partnership converts to a Subchapter S corporation. (This is a GIL).

December 11, 2025

NAME
COMPANY
ADDRESS

Re: Illinois NLD Carryforward Question

Dear NAME:

This letter is in response to your letter dated December 11, 2023, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at <https://tax.illinois.gov/> to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Taxpayer is currently an LLC filing as a partnership on IL-1065 and will do so for 2023 also. Effective 1/1/24, the LLC plans on making an S election. Taxpayer expects to have an Illinois NLD carry forward from 2022 (reduced by some income in 2023) of about \$800,000. Taxpayer expects to make the Federal S election but maintain the same LLC for legal purposes.

1. The 2024 Federal return will be filed on 1120-S. We understand that proper Illinois filing will be on IL-1120-ST. Please verify this.
2. Can the Illinois NLD remaining from the 2023 IL-1065 be carried forward and used on the 2024 IL-1120-ST?

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We have been unable to locate an affirmative documentation allowing this. Since we are concerned about matching issues in the year after the change, please provide any supporting documentation or references.

Thank you for your assistance in this matter.

RULING

You have correctly identified Form IL-1120-ST as the appropriate return type for an S corporation.

A partnership is a separate entity from a corporation. Under federal law and the Illinois Income Tax Act (IITA), partnerships and corporations are distinct legal and taxable entities. Absent a showing that the corporation is the same taxable entity, any NLD incurred by a partnership would not transfer to a subsequent corporation. Please see 86 Ill. Adm. Code 100.4500(b).

26 USC Section 7701(a)(2) provides that the definition of partnership "...includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term 'partner' includes a member in such a syndicate, group, pool, joint venture, or organization." 26 USC 7701(a)(3) defines a corporation as "...includes associations, joint-stock companies, and insurance companies."

26 CFR Section 301.7701-2 states in pertinent part as follows: "...[a] business entity with two or more members is classified for federal tax purposes as either a corporation or a partnership." 26 CFR 301.7701-2 (c)(1) states that a partnership is "...a business entity that is not a corporation under paragraph (b) of this section and that has at least two members."

86 Ill. Adm. Code Section 100.4500 provides in pertinent part as follows:

- (a) Except as expressly provided by statute, carryovers of net loss deductions and credits are only allowed to be claimed by the taxpayer that incurred the loss or earned the credit. See, e.g., *New Colonial Ice Co. v. Helvering*,

292 U.S. 435 (1934).

* * *

(3) In other situations that are not covered by an express provision of the IITA net loss deductions incurred and credits earned by one entity may be carried back or forward for use only by that same entity, and cannot be used by a different entity. This rule applies to prevent the carryover of items when an entity is deemed to be a new entity for purposes of the Internal Revenue Code and the IITA despite its continued legal existence....

Carryovers of net loss deductions and credits may be claimed only by the taxpayer or entity that incurred the loss or earned the credit, with only certain narrow exceptions provided by statute. The transition from partnership to S corporation from the federal standpoint involves liquidation of the partnership. These transactions cause tax consequences for the individual partners. The partners then reorganize as a corporation that then makes an S election. 35 ILCS 5/405 is not applicable to this fact situation.

Where express provisions of the IITA do not apply, net loss deductions and credits earned may carry back or forward only for the same entity that originally experienced the loss or credit. If the surviving entity is a "new" entity for the purposes of taxation, then the credit or loss will not carry. In this situation, the original LLC is becoming a S corporation. The partnership ceases to exist and all assets are divided between the partners. The former partners may then elect to create an S corporation. However, that subsequent S corporation is a separate and distinct entity for tax purposes. For federal purposes, the subsequent S corporation and the former partnership are distinct taxable entities. Please see Revenue Ruling 84-111. This means that the NLD of the LLC/partnership are not available to the S corporation.

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

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

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Sincerely,

J.L. Ackerman
Associate Counsel (Income Tax)