

HB3955



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3955

by Rep. Joe Sosnowski

SYNOPSIS AS INTRODUCED:

35 ILCS 5/911

from Ch. 120, par. 9-911

Amends the Illinois Income Tax Act. Extends the statute of limitations for claims for refunds from 3 years to 5 years. Effective immediately.

LRB099 10010 HLH 30230 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 911 as follows:

6 (35 ILCS 5/911) (from Ch. 120, par. 9-911)

7 Sec. 911. Limitations on claims for refund.

8 (a) In general. Except as otherwise provided in this Act:

9 (1) A claim for refund shall be filed not later than 5
10 ~~3~~ years after the date the return was filed (in the case of
11 returns required under Article 7 of this Act respecting any
12 amounts withheld as tax, not later than 5 ~~3~~ years after the
13 15th day of the 4th month following the close of the
14 calendar year in which such withholding was made), or one
15 year after the date the tax was paid, whichever is the
16 later; and

17 (2) No credit or refund shall be allowed or made with
18 respect to the year for which the claim was filed unless
19 such claim is filed within such period.

20 (b) Federal changes.

21 (1) In general. In any case where notification of an
22 alteration is required by Section 506(b), a claim for
23 refund may be filed within 2 years after the date on which

1 such notification was due (regardless of whether such
2 notice was given), but the amount recoverable pursuant to a
3 claim filed under this Section shall be limited to the
4 amount of any overpayment resulting under this Act from
5 recomputation of the taxpayer's net income, net loss, or
6 Article 2 credits for the taxable year after giving effect
7 to the item or items reflected in the alteration required
8 to be reported.

9 (2) Tentative carryback adjustments paid before
10 January 1, 1974. If, as the result of the payment before
11 January 1, 1974 of a federal tentative carryback
12 adjustment, a notification of an alteration is required
13 under Section 506(b), a claim for refund may be filed at
14 any time before January 1, 1976, but the amount recoverable
15 pursuant to a claim filed under this Section shall be
16 limited to the amount of any overpayment resulting under
17 this Act from recomputation of the taxpayer's base income
18 for the taxable year after giving effect to the federal
19 alteration resulting from the tentative carryback
20 adjustment irrespective of any limitation imposed in
21 paragraph (1) of this subsection.

22 (c) Extension by agreement. Where, before the expiration of
23 the time prescribed in this section for the filing of a claim
24 for refund, both the Department and the claimant shall have
25 consented in writing to its filing after such time, such claim
26 may be filed at any time prior to the expiration of the period

1 agreed upon. The period so agreed upon may be extended by
2 subsequent agreements in writing made before the expiration of
3 the period previously agreed upon. In the case of a taxpayer
4 who is a partnership, Subchapter S corporation, or trust and
5 who enters into an agreement with the Department pursuant to
6 this subsection on or after January 1, 2003, a claim for refund
7 may be filed by the partners, shareholders, or beneficiaries of
8 the taxpayer at any time prior to the expiration of the period
9 agreed upon. Any refund allowed pursuant to the claim, however,
10 shall be limited to the amount of any overpayment of tax due
11 under this Act that results from recomputation of items of
12 income, deduction, credits, or other amounts of the taxpayer
13 that are taken into account by the partner, shareholder, or
14 beneficiary in computing its liability under this Act.

15 (d) Limit on amount of credit or refund.

16 (1) Limit where claim filed within 5-year ~~3-year~~
17 period. If the claim was filed by the claimant during the
18 5-year ~~3-year~~ period prescribed in subsection (a), the
19 amount of the credit or refund shall not exceed the portion
20 of the tax paid within the period, immediately preceding
21 the filing of the claim, equal to 5 ~~3~~ years plus the period
22 of any extension of time for filing the return.

23 (2) Limit where claim not filed within 5-year ~~3-year~~
24 period. If the claim was not filed within such 5-year
25 ~~3-year~~ period, the amount of the credit or refund shall not
26 exceed the portion of the tax paid during the one year

1 immediately preceding the filing of the claim.

2 (e) Time return deemed filed. For purposes of this section
3 a tax return filed before the last day prescribed by law for
4 the filing of such return (including any extensions thereof)
5 shall be deemed to have been filed on such last day.

6 (f) No claim for refund or credit based on the taxpayer's
7 taking a credit for estimated tax payments as provided by
8 Section 601(b) (2) or for any amount paid by a taxpayer pursuant
9 to Section 602(a) or for any amount of credit for tax withheld
10 pursuant to Article 7 may be filed unless a return was filed
11 for the tax year not more than 5 ~~3~~ years after the due date, as
12 provided by Section 505, of the return which was required to be
13 filed relative to the taxable year for which the payments were
14 made or for which the tax was withheld. The changes in this
15 subsection (f) made by this amendatory Act of 1987 shall apply
16 to all taxable years ending on or after December 31, 1969.

17 (g) Special Period of Limitation with Respect to Net Loss
18 Carrybacks. If the claim for refund relates to an overpayment
19 attributable to a net loss carryback as provided by Section
20 207, in lieu of the 5-year ~~3-year~~ period of limitation
21 prescribed in subsection (a), the period shall be that period
22 which ends 5 ~~3~~ years after the time prescribed by law for
23 filing the return (including extensions thereof) for the
24 taxable year of the net loss which results in such carryback
25 (or, on and after August 13, 1999, with respect to a change in
26 the carryover of an Article 2 credit to a taxable year

1 resulting from the carryback of a Section 207 loss incurred in
2 a taxable year beginning on or after January 1, 2000, the
3 period shall be that period that ends 5 ~~3~~ years after the time
4 prescribed by law for filing the return (including extensions
5 of that time) for that subsequent taxable year), or the period
6 prescribed in subsection (c) in respect of such taxable year,
7 whichever expires later. In the case of such a claim, the
8 amount of the refund may exceed the portion of the tax paid
9 within the period provided in subsection (d) to the extent of
10 the amount of the overpayment attributable to such carryback.
11 On and after August 13, 1999, if the claim for refund relates
12 to an overpayment attributable to the carryover of an Article 2
13 credit, or of a Section 207 loss, earned, incurred (in a
14 taxable year beginning on or after January 1, 2000), or used in
15 a year for which a notification of a change affecting federal
16 taxable income must be filed under subsection (b) of Section
17 506, the claim may be filed within the period prescribed in
18 paragraph (1) of subsection (b) in respect of the year for
19 which the notification is required. In the case of such a
20 claim, the amount of the refund may exceed the portion of the
21 tax paid within the period provided in subsection (d) to the
22 extent of the amount of the overpayment attributable to the
23 recomputation of the taxpayer's Article 2 credits, or Section
24 207 loss, earned, incurred, or used in the taxable year for
25 which the notification is given.

26 (h) Claim for refund based on net loss. On and after August

1 23, 2002, no claim for refund shall be allowed to the extent
2 the refund is the result of an amount of net loss incurred in
3 any taxable year ending prior to December 31, 2002 under
4 Section 207 of this Act that was not reported to the Department
5 within 5 ~~3~~ years of the due date (including extensions) of the
6 return for the loss year on either the original return filed by
7 the taxpayer or on amended return or to the extent that the
8 refund is the result of an amount of net loss incurred in any
9 taxable year under Section 207 for which no return was filed
10 within 5 ~~3~~ years of the due date (including extensions) of the
11 return for the loss year.

12 (i) Periods of limitation suspended while taxpayer is
13 unable to manage financial affairs due to disability. In the
14 case of an individual, the running of the periods specified in
15 this Section shall be suspended during any period when that
16 individual is financially disabled.

17 For purposes of this subsection (i), an individual is
18 financially disabled if that individual is unable to manage his
19 or her financial affairs by reason of a medically determinable
20 physical or mental impairment of the individual that can be
21 expected to result in death, or which has lasted or can be
22 expected to last for a continuous period of not less than 12
23 months.

24 An individual shall not be treated as financially disabled
25 during any period when that individual's spouse or any other
26 person is authorized to act on behalf of that individual with

1 respect to financial matters.

2 (Source: P.A. 97-507, eff. 8-23-11; 98-970, eff. 8-15-14.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.