



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5473

Introduced 2/15/2012, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

35 ILCS 5/207

from Ch. 120, par. 2-207

Amends the Illinois Income Tax Act. Provides that a limitation on net loss carryovers applies to losses for taxable years ending on or after December 31, 1999 and prior to December 31, 2003 and carried forward to years covered by the limitation period. Effective immediately.

LRB097 19216 HLH 64458 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 207 as follows:

6 (35 ILCS 5/207) (from Ch. 120, par. 2-207)

7 (Text of Section before amendment by P.A. 97-636)

8 Sec. 207. Net Losses.

9 (a) If after applying all of the (i) modifications provided
10 for in paragraph (2) of Section 203(b), paragraph (2) of
11 Section 203(c) and paragraph (2) of Section 203(d) and (ii) the
12 allocation and apportionment provisions of Article 3 of this
13 Act and subsection (c) of this Section, the taxpayer's net
14 income results in a loss;

15 (1) for any taxable year ending prior to December 31,
16 1999, such loss shall be allowed as a carryover or
17 carryback deduction in the manner allowed under Section 172
18 of the Internal Revenue Code;

19 (2) for any taxable year ending on or after December
20 31, 1999 and prior to December 31, 2003, such loss shall be
21 allowed as a carryback to each of the 2 taxable years
22 preceding the taxable year of such loss and shall be a net
23 operating loss carryover to each of the 20 taxable years

1 following the taxable year of such loss, except as provided
2 in subsection (d); and

3 (3) for any taxable year ending on or after December
4 31, 2003, such loss shall be allowed as a net operating
5 loss carryover to each of the 12 taxable years following
6 the taxable year of such loss, except as provided in
7 subsection (d).

8 (a-5) Election to relinquish carryback and order of
9 application of losses.

10 (A) For losses incurred in tax years ending prior
11 to December 31, 2003, the taxpayer may elect to
12 relinquish the entire carryback period with respect to
13 such loss. Such election shall be made in the form and
14 manner prescribed by the Department and shall be made
15 by the due date (including extensions of time) for
16 filing the taxpayer's return for the taxable year in
17 which such loss is incurred, and such election, once
18 made, shall be irrevocable.

19 (B) The entire amount of such loss shall be carried
20 to the earliest taxable year to which such loss may be
21 carried. The amount of such loss which shall be carried
22 to each of the other taxable years shall be the excess,
23 if any, of the amount of such loss over the sum of the
24 deductions for carryback or carryover of such loss
25 allowable for each of the prior taxable years to which
26 such loss may be carried.

1 (b) Any loss determined under subsection (a) of this
2 Section must be carried back or carried forward in the same
3 manner for purposes of subsections (a) and (b) of Section 201
4 of this Act as for purposes of subsections (c) and (d) of
5 Section 201 of this Act.

6 (c) Notwithstanding any other provision of this Act, for
7 each taxable year ending on or after December 31, 2008, for
8 purposes of computing the loss for the taxable year under
9 subsection (a) of this Section and the deduction taken into
10 account for the taxable year for a net operating loss carryover
11 under paragraphs (1), (2), and (3) of subsection (a) of this
12 Section, the loss and net operating loss carryover shall be
13 reduced in an amount equal to the reduction to the net
14 operating loss and net operating loss carryover to the taxable
15 year, respectively, required under Section 108(b)(2)(A) of the
16 Internal Revenue Code, multiplied by a fraction, the numerator
17 of which is the amount of discharge of indebtedness income that
18 is excluded from gross income for the taxable year (but only if
19 the taxable year ends on or after December 31, 2008) under
20 Section 108(a) of the Internal Revenue Code and that would have
21 been allocated and apportioned to this State under Article 3 of
22 this Act but for that exclusion, and the denominator of which
23 is the total amount of discharge of indebtedness income
24 excluded from gross income under Section 108(a) of the Internal
25 Revenue Code for the taxable year. The reduction required under
26 this subsection (c) shall be made after the determination of

1 Illinois net income for the taxable year in which the
2 indebtedness is discharged.

3 (d) In the case of a corporation (other than a Subchapter S
4 corporation), no carryover deduction shall be allowed under
5 this Section for any taxable year ending after December 31,
6 2010 and prior to December 31, 2014; provided that, for
7 purposes of determining the taxable years to which a net loss
8 may be carried under subsection (a) of this Section, no taxable
9 year for which a deduction is disallowed under this subsection
10 shall be counted.

11 (e) In the case of a residual interest holder in a real
12 estate mortgage investment conduit subject to Section 860E of
13 the Internal Revenue Code, the net loss in subsection (a) shall
14 be equal to:

15 (1) the amount computed under subsection (a), without
16 regard to this subsection (e), or if that amount is
17 positive, zero;

18 (2) minus an amount equal to the amount computed under
19 subsection (a), without regard to this subsection (e),
20 minus the amount that would be computed under subsection
21 (a) if the taxpayer's federal taxable income were computed
22 without regard to Section 860E of the Internal Revenue Code
23 and without regard to this subsection (e).

24 The modification in this subsection (e) is exempt from the
25 provisions of Section 250.

26 (Source: P.A. 96-1496, eff. 1-13-11; 97-507, eff. 8-23-11.)

1 (Text of Section after amendment by P.A. 97-636)

2 Sec. 207. Net Losses.

3 (a) If after applying all of the (i) modifications provided
4 for in paragraph (2) of Section 203(b), paragraph (2) of
5 Section 203(c) and paragraph (2) of Section 203(d) and (ii) the
6 allocation and apportionment provisions of Article 3 of this
7 Act and subsection (c) of this Section, the taxpayer's net
8 income results in a loss;

9 (1) for any taxable year ending prior to December 31,
10 1999, such loss shall be allowed as a carryover or
11 carryback deduction in the manner allowed under Section 172
12 of the Internal Revenue Code;

13 (2) for any taxable year ending on or after December
14 31, 1999 and prior to December 31, 2003, such loss shall be
15 allowed as a carryback to each of the 2 taxable years
16 preceding the taxable year of such loss and shall be a net
17 operating loss carryover to each of the 20 taxable years
18 following the taxable year of such loss, except as provided
19 in subsection (d); and

20 (3) for any taxable year ending on or after December
21 31, 2003, such loss shall be allowed as a net operating
22 loss carryover to each of the 12 taxable years following
23 the taxable year of such loss, except as provided in
24 subsection (d).

25 (a-5) Election to relinquish carryback and order of

1 application of losses.

2 (A) For losses incurred in tax years ending prior
3 to December 31, 2003, the taxpayer may elect to
4 relinquish the entire carryback period with respect to
5 such loss. Such election shall be made in the form and
6 manner prescribed by the Department and shall be made
7 by the due date (including extensions of time) for
8 filing the taxpayer's return for the taxable year in
9 which such loss is incurred, and such election, once
10 made, shall be irrevocable.

11 (B) The entire amount of such loss shall be carried
12 to the earliest taxable year to which such loss may be
13 carried. The amount of such loss which shall be carried
14 to each of the other taxable years shall be the excess,
15 if any, of the amount of such loss over the sum of the
16 deductions for carryback or carryover of such loss
17 allowable for each of the prior taxable years to which
18 such loss may be carried.

19 (b) Any loss determined under subsection (a) of this
20 Section must be carried back or carried forward in the same
21 manner for purposes of subsections (a) and (b) of Section 201
22 of this Act as for purposes of subsections (c) and (d) of
23 Section 201 of this Act.

24 (c) Notwithstanding any other provision of this Act, for
25 each taxable year ending on or after December 31, 2008, for
26 purposes of computing the loss for the taxable year under

1 subsection (a) of this Section and the deduction taken into
2 account for the taxable year for a net operating loss carryover
3 under paragraphs (1), (2), and (3) of subsection (a) of this
4 Section, the loss and net operating loss carryover shall be
5 reduced in an amount equal to the reduction to the net
6 operating loss and net operating loss carryover to the taxable
7 year, respectively, required under Section 108(b)(2)(A) of the
8 Internal Revenue Code, multiplied by a fraction, the numerator
9 of which is the amount of discharge of indebtedness income that
10 is excluded from gross income for the taxable year (but only if
11 the taxable year ends on or after December 31, 2008) under
12 Section 108(a) of the Internal Revenue Code and that would have
13 been allocated and apportioned to this State under Article 3 of
14 this Act but for that exclusion, and the denominator of which
15 is the total amount of discharge of indebtedness income
16 excluded from gross income under Section 108(a) of the Internal
17 Revenue Code for the taxable year. The reduction required under
18 this subsection (c) shall be made after the determination of
19 Illinois net income for the taxable year in which the
20 indebtedness is discharged.

21 (d) In the case of a corporation (other than a Subchapter S
22 corporation), no carryover deduction shall be allowed under
23 this Section for any taxable year ending after December 31,
24 2010 and prior to December 31, 2012, and no carryover deduction
25 shall exceed \$100,000 for any taxable year ending on or after
26 December 31, 2012 and prior to December 31, 2014; provided

1 that, for purposes of determining the taxable years to which a
2 net loss may be carried under subsection (a) of this Section,
3 no taxable year for which a deduction is disallowed under this
4 subsection, or for which the deduction would exceed \$100,000 if
5 not for this subsection, shall be counted.

6 (e) In the case of a residual interest holder in a real
7 estate mortgage investment conduit subject to Section 860E of
8 the Internal Revenue Code, the net loss in subsection (a) shall
9 be equal to:

10 (1) the amount computed under subsection (a), without
11 regard to this subsection (e), or if that amount is
12 positive, zero;

13 (2) minus an amount equal to the amount computed under
14 subsection (a), without regard to this subsection (e),
15 minus the amount that would be computed under subsection
16 (a) if the taxpayer's federal taxable income were computed
17 without regard to Section 860E of the Internal Revenue Code
18 and without regard to this subsection (e).

19 The modification in this subsection (e) is exempt from the
20 provisions of Section 250.

21 (Source: P.A. 96-1496, eff. 1-13-11; 97-507, eff. 8-23-11;
22 97-636, eff. 6-1-12.)

23 Section 95. No acceleration or delay. Where this Act makes
24 changes in a statute that is represented in this Act by text
25 that is not yet or no longer in effect (for example, a Section

1 represented by multiple versions), the use of that text does
2 not accelerate or delay the taking effect of (i) the changes
3 made by this Act or (ii) provisions derived from any other
4 Public Act.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.