



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4038

by Rep. Jil Tracy - Dwight Kay

SYNOPSIS AS INTRODUCED:

35 ILCS 5/207

from Ch. 120, par. 2-207

Amends the Illinois Income Tax Act. Removes a provision limiting the net loss carryover deduction to \$100,000 for any taxable year ending on or after December 31, 2012 and prior to December 31, 2014. Provides that, for any taxable year ending on or after December 31, 2012, such a loss is allowed as a carryback to each of the 2 taxable years preceding the taxable year of the loss and is allowed as a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss. Effective immediately.

LRB097 17559 HLH 62765 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; and

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

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

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

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

26 (b) Any loss determined under subsection (a) of this

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

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

1 indebtedness is discharged.

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

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

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

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

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

25 (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; and

19 (3) for any taxable year ending on or after December
20 31, 2003 and prior to December 31, 2012, such loss shall be
21 allowed as a net operating loss carryover to each of the 12
22 taxable years following the taxable year of such loss,
23 except as provided in subsection (d); ~~and~~

24 (4) except as provided in subsection (d), for any
25 taxable year ending on or after December 31, 2012, such
26 loss shall be allowed as a carryback to each of the 2

1 taxable years preceding the taxable year of the loss and
2 shall be allowed as a net operating loss carryover to each
3 of the 20 taxable years following the taxable year of the
4 loss.

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

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

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

24 (b) Any loss determined under subsection (a) of this
25 Section must be carried back or carried forward in the same
26 manner for purposes of subsections (a) and (b) of Section 201

1 of this Act as for purposes of subsections (c) and (d) of
2 Section 201 of this Act.

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

26 (d) In the case of a corporation (other than a Subchapter S

1 corporation), no carryover deduction shall be allowed under
2 this Section for any taxable year ending after December 31,
3 2010 and prior to December 31, 2012, ~~and no carryover deduction~~
4 ~~shall exceed \$100,000 for any taxable year ending on or after~~
5 ~~December 31, 2012 and prior to December 31, 2014;~~ provided
6 that, for purposes of determining the taxable years to which a
7 net loss may be carried under subsection (a) of this Section,
8 no taxable year for which a deduction is disallowed under this
9 subsection, ~~or for which the deduction would exceed \$100,000 if~~
10 ~~not for this subsection,~~ 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 97-636, eff. 6-1-12.)

2 Section 95. No acceleration or delay. Where this Act makes
3 changes in a statute that is represented in this Act by text
4 that is not yet or no longer in effect (for example, a Section
5 represented by multiple versions), the use of that text does
6 not accelerate or delay the taking effect of (i) the changes
7 made by this Act or (ii) provisions derived from any other
8 Public Act.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.