

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>JOHN P. PEARL</b>	)	
	)	
<b>Petitioner</b>	)	
<b>v.</b>	)	<b>14-TT-0066</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**NOTICE OF FILING**

TO: Karen M. Stumpe  
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PLEASE TAKE NOTICE, that on May 16, 2014, the undersigned representative for the Illinois Department of Revenue (the "Department") filed the Department's Answer to H&R Block Bank's petition with the Illinois Tax Tribunal, located at 160 North LaSalle Street, Room N506, Chicago, IL 60601.

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	)	
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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to John P. Pearl’s (“Petitioner”) Petition respectfully pleads as follows:

**PARTIES**

1. Petitioner resides at 600 E. High Point Road, Peoria, Illinois 61614; Petitioner’s telephone number is 309-691-4444.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(A) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Respondent admits the factual allegations contained in Paragraph 1.

2. Petitioner social security number is XXX-XX-9772.

**ANSWER:** The information contained in Paragraph 2 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant

to Rule 310(b)(2). Notwithstanding the above, Respondent admits the factual allegation contained in Paragraph 2.

3. Illinois Department of Revenue (“Respondent”) issued Notices of Claim Denial dated February 24, 2014 for Petitioner’s calendar years 2010 and 2011 (attached as Exhibits A and B), which are the subject of this Petition. Both years involve the same issue.

**ANSWER:** Admit.

4. Petitioner filed Federal Form 1045 to claim a carryback of his 2012 net operating loss to tax years 2010 and 2011. The Internal Revenue approved the carryback, by Notices dated December 9, 2014 (attached as Exhibits C and D). The amount of the net operating loss and the Petitioner’s right to carry back the loss to year 2010 and 2011 are not in dispute.

**ANSWER:** The Respondent does not know whether the Taxpayer filed a US-1040X or a Form 1045 to carryback a 2012 net operating loss to tax year 2010 and 2011. Further, the Respondent does not know whether the Internal Revenue Service accept all or part of the net operating loss Petitioner carried back on his US-1040X or Form 1045. Further, the amount of a net operating loss that an individual taxpayer is allowed carry back on his Illinois Amended Individual Income Tax Return (“IL-1040X”) is limited in the manner prescribed in the instructions to the IL-1040X. Copies of the instructions to the IL-1120X for tax years 2010 and 2011 are attached hereto as Department’s Exhibits A and B, respectively. Accordingly, until the Petitioner submits the documentation specified in the instructions to the IL-1040X, the Respondent cannot determine whether the Petitioner has a right to carry back the

amount of net operating loss he claimed on his IL-1040X for tax years 2010 and 2011. Therefore, Respondent lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 4 and demands strict proof thereof.

5. Respondent denied the carryback, on the basis that it did not receive a complete copy of the federal finalization notification issued by the Internal Revenue Service stating that the Internal Revenue Service accepted the changes to Petitioner's Federal taxable income for 2010 and 2011. Respondent requested that Petitioner send Respondent copies of the notifications which Petitioner did on March 11, 2014 via facsimile (attached as Exhibit E).

**ANSWER:** Although the Notices of Claim Denials, dated February 24, 2014, indicate that the Respondent did not receive federal finalization notifications issued by the Internal Revenue Service, the documents Petitioner attached as Exhibit C and D to his Petition do not (i) contain all of the information necessary to determine the amount of the net operating loss the Internal Revenue Service accepted and allowed the Petitioner to carry back; and (ii) include a Schedule B showing the amount of the Petitioner's Modified Taxable Income, which allows the Respondent to determine the amount of the net operating loss the Petitioner is allowed to carryback on his IL-1120X for tax years 2010 and 2011. Therefore, the Respondent can neither admit or deny the allegations contained in paragraph 5 and demands strict proof thereof.

6. The Notices of Claim Denial also include adjustments to the Petitioner's estimated tax payments with the Petitioners agree.

**ANSWER:** Admit.

7. Petitioner's certified public accountant contacted Respondent on March 28, 2014 to verify Respondent's receipt of the Notices of Claim Denial. A representative of Respondent verified receipt of the Notices of Claim Denial and also indicated that due to backlog he estimated it would be five months before Petitioners could expect a response from Respondent.

**ANSWER:** The Respondent lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 7 and demands strict proof thereof.

8. The Notices of Claim Denial states that a protest must be filed within 60 days of the Notice or the Notices of Claim Denial become final. The Notices of Claim Denial issued to Petitioner are dated February 24, 2014. It is unlikely that Respondent will act on this matter within the time frame within which Petitioner must file a protest if Petitioner does not agree with Respondent's decision, and as such Petitioner is filing this Petition to protest his refund claims for 2010 and 2011.

**ANSWER:** The Respondent admits that each Notice of Claim Denial states, in part, that a protest must be filed within 60 days of the date of the Notice of Claim Denial. The copies of the Notices of Claim Denial for tax years 2010 and 2011 that Petitioner attached to his Petition (see Exhibits A and B) speaks for themselves. Further, Paragraph 8 contains opinions or conclusions not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

9. There are no disputes regarding application of facts or law rather this matter involves only providing documentation of Internal Revenue Service acceptance of the federal net

operating loss carryback. Petitioner has provided the notifications required by Respondent to validate the net operating loss carry back claim to 2010 and 2011 and request judgment in its favor.

**ANSWER:** Denied.

10. The refund due to Petitioner for overpayment of income for 2010 is \$30,544 (see calculation attached as Exhibit F). The refund due to Petitioner for overpayment of income tax for 2011 is \$36,819 (see calculation attached as Exhibit G).

**ANSWER:** The Respondent admits that Petitioner claimed refunds on his IL-1040X in the amounts of \$30,544 and \$36,819 for tax years 2010 and 2011, respectively. However, the Respondent lacks sufficient knowledge to either admit or deny whether the amounts Petitioner claimed as refunds on his IL-1120X are correct and demands strict proof thereof.

Wherefore, Petitioner requests a refund in the amounts noted in this Petition, plus interest as applicable.

**WHEREFORE,** Department prays that the Tribunal enter an order to:

- a. deny each prayer for relief in the Petitioner's Petition;
- b. find the Notices of Claim Denial are correct as issued;
- c. order judgment in favor of the Department and against the Petitioner; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
State of Illinois

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**DEPARTMENT'S**

**EXHIBIT A**



# Illinois Department of Revenue 2010 Form IL-1040-X Instructions

## General Information

### Should I file Form IL-1040-X?

You should file Form IL-1040-X, Amended Individual Income Tax Return, if you need to change a previously filed Form IL-1040, Individual Income Tax Return, due to a change that affects items used to figure your Illinois net income or credits.

Your change can occur from a state change or a federal change, *i.e.*,

- an amendment of your federal income tax return,
- an adjustment made by the Internal Revenue Service (IRS), or
- any other recomputation or redetermination.

You should file Form IL-1040-X **only** after you have filed a processable Illinois Income Tax return. You must file a separate Form IL-1040-X for each tax year you wish to change. Do not file another Form IL-1040 with "amended" figures to change your originally filed Form IL-1040.

**Note** Do not file Form IL-1040-X if you are changing only your name, address, or Social Security number. Instead, forward this information to the address provided under "What if I need assistance?".

### Which revision of Form IL-1040-X should I use?

For amending tax years 2008 or after, use the form for the year you are amending. If you are amending your Form IL-1040 for 2007 or earlier, you must use the 10/08 revision of Form IL-1040-X (for 2007 and earlier tax years).

### How long do I have to amend my return?

The amount of time you have to amend your return depends on whether your Form IL-1040-X is being filed due to a state change or a federal change.

**State change only** – If your change decreases the tax due to Illinois and you want a refund, you must file an amended return (claim for refund) within

- three years after the extended due date,
  - three years after the date your original return was filed, or
  - one year after the date your Illinois tax was paid,
- whichever is latest.

If your change increases the tax you owe to Illinois, you should file a Form IL-1040-X and pay the tax, penalty, and interest as soon as you realize that it is owed.

**Federal change (including NOLs)** – If your federal change decreases your Illinois tax, and you want a refund, you must file an amended return (claim for refund) within two years plus 120 days of federal finalization.

**Note** If your federal change resulted in an overpayment or if you claimed a net operating loss (NOL) carryback, you should **not file this form** until you receive a federal finalization notification from the IRS stating that they have accepted your change either by paying a refund or by final assessment, agreement, or judgment.

If your federal change increases your Illinois tax, you must file a Form IL-1040-X and pay any additional tax within 120 days of the federal finalization date (the date you filed your U.S. Form 1040-X and paid the tax due), or you may be assessed a late-payment penalty.

**Note** Any Form IL-1040-X filed prior to the automatic extension date will be considered a "corrected" rather than an amended return and any penalties and interest may be refigured.

If you file an amended return after the extended due date, any penalty for late payment of estimated tax will remain as originally assessed.

You must file Form IL-1040-X, along with proper supporting documentation, for both corrected and amended returns.

**Note** If your amended return is filed incorrectly and additional liability is due, we must issue you a notice of deficiency within two years from the date you filed Form IL-1040-X. If you fail to file an amended return when required, we may issue you a notice of deficiency at any time.

### What if I have a net operating loss deduction?

In general, Illinois allows you to take the same NOL carryback or carryforward deduction allowed on your federal income tax return. A carryback deduction is a "federal change" that reduces your federal adjusted gross income on Step 3, Line 1. Check the box marked "NOL" on Step 1, Line E, and indicate the date the IRS accepted your carryback deduction. This will usually be the date on which the IRS issued your refund check. You must file Form IL-1040-X within 2 years plus 120 days after that date to receive a refund.

Illinois does not allow you to deduct the same NOL twice. To prevent a double deduction of your NOL, your deduction for a tax year cannot be greater than the federal NOL available for deduction in that year minus the federal NOL available to carry to later years. This is the amount reported as "Modified Taxable Income" on federal Form 1045, Application for Tentative Refund, Schedule B, Line 9.

**Attach** a copy of your federal Form 1045 Schedule B.

If you are a resident in the year you are allowed a federal NOL deduction, Illinois allows you to deduct the entire amount even if you were not a resident in the year the loss occurred. If you are a nonresident or part-year resident in the year you are allowed the federal NOL deduction, see the instructions for Step 3, Line 19, of Illinois Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax.

**Example:** In tax year 2009, Paul Taxpayer, a nonresident individual, has \$20,000 in federal net losses from Partnership A and \$180,000 in net losses from Partnership B. He has \$100,000 in income from other sources, so his adjusted gross income for 2009 is a net operating loss of \$100,000. Federally, Paul Taxpayer carries the entire \$100,000 loss back to 2007.

Ten percent of the \$100,000 net operating loss deduction for 2007 is attributable to Partnership A (Partnership A's \$20,000 loss in 2009 is divided by the \$200,000 in total losses incurred from partnerships in 2009) and 90 percent of the net operating loss deduction is attributable to Partnership B. See the Schedule NR Instructions for Step 3, Line 19, to determine the amount of each partnership's net operating loss deduction amount that is allocated or apportioned to Illinois.

### What should I attach to Form IL-1040-X when claiming a NOL?

In order to support a refund claimed as a result of a finalized federal NOL carryback, you must attach the following information:

- a copy of your U.S. 1040X, Amended U.S. Individual Income Tax Return, or U.S. 1045 including any Schedules A and B and
- a copy of any refund check and any other notification you received from the IRS stating that they accepted the changes shown on your U.S. 1040X or U.S. 1045.

**Note** If your NOL may be carried to any later taxable year, you must complete and attach U.S. 1045 Schedule B, even if you did not file a U.S. 1045 for this year.

In addition, if you were a nonresident or part-year resident of Illinois in the carryback year, you must also attach

- copies of the U.S. 1040, Pages 1 and 2, and Schedules C, E, and F filed for the **loss year**. Include supporting information that identifies the partnerships and S corporations (names and FEINs) whose losses are included in Schedules C, E and F and the amount of loss incurred by each entity.

- copies of Schedule K-1-P or other documentation for the **carryback year** for each partnership or S corporation through which you incurred an NOL in the loss year and that identifies each entity's apportionment formula for the carryback year.

If you fail to attach the required information to your Form IL-1040-X, your refund may be delayed or denied.

### What is my exemption allowance?

You may generally claim a \$2000 exemption for yourself and each of your dependents. The additional exemption allowance for taxpayers and their spouses who are 65 years of age or older or who are legally blind is \$1,000. See the Form IL-1040 instructions for details.

### What must I attach to my Form IL-1040-X?

If you are filing Form IL-1040-X because

- you filed a U.S. Form 1040X to report a federal change other than a NOL carryback, you must include a copy of that form. If your federal change resulted in an overpayment, you must also attach a copy of the notification you received from the IRS stating that they accepted the changes shown on your U.S. Form 1040X; e.g., a refund check, "Statement of Account," agreement, or judgment. If you do not have a copy of this notification, please contact the IRS at 1 800 829-0922 to request a record of your account.
- of a change made by the IRS, you must include copies of all the federal examining officer's reports, including preliminary, revised, corrected, and superseding reports.
- of any other changes, see the instructions for Form IL-1040 and any schedules to see what to attach.

**Note** If the change you are making requires a supporting schedule

or form, you must attach it to your Form IL-1040-X. **Without proper attachments, we may partially or totally deny your claim.**

**Note** Keep all state and federal forms with your tax records. You must send us additional information if we request it.

### What if my claim is denied?

If we deny your refund claim by a written notice of denial, you may file a written protest within 60 days and request a hearing. If you do not hear from us within six months after you have filed your claim, you may file a written protest at any time and request a hearing.

### What if I need assistance?

If you need assistance,

- visit our web site at [tax.illinois.gov](http://tax.illinois.gov),
- call our Taxpayer Assistance Division at **1 800 732-8866** or **217 782-3336**,
- call our TDD (telecommunications device for the deaf) at **1 800 544-5304**, or
- write to us at the Illinois Department of Revenue, P.O. Box 19044, Springfield, Illinois 62794-9044.

### What if I need additional forms or schedules?

If you need additional forms or schedules,

- visit our web site at [tax.illinois.gov](http://tax.illinois.gov),
- call our 24-hour Forms Order Line at **1 800 356-6302**, or
- write to us at the Illinois Department of Revenue, P.O. Box 19010, Springfield, Illinois 62794-9010.

## Step-by-Step Instructions

**Note** You must file a separate Form IL-1040-X for each year you are amending.

### Step 1: Personal information

**Line A** – Print or type your Social Security number(s), name(s), and current address.

**Line B** – Check the box if your Social Security number(s), name(s), or address are different on this return than on any previously filed return.

**Line C** – Check the box to indicate your filing status. If your filing status is different from your previously filed return, explain your change in Step 2, Line H.

**Note** In general, most taxpayers should use the same filing status as on their federal return. However,

- if you are married, you filed a joint federal return, and you are an injured spouse (e.g., your spouse owes a liability, for which you are not responsible, to a government agency), you should file separate Illinois returns using the "married filing separately" filing status. If you file a joint Illinois return, we may take the entire refund to pay your spouse's liability. If you did not make this election on your original Form IL-1040, you may file Form IL-1040-X to make or revoke this election only if the extended due date of the return has not passed, and once the election is made it is irrevocable.
- if either you or your spouse is an Illinois resident and the other is a part-year resident or nonresident, and you elect to file a joint return, you will both be treated as residents. If you originally filed a joint return, but did not treat both yourself and your spouse as Illinois residents, you must correct that error by either filing a joint Form IL-1040-X treating yourselves as Illinois residents or by filing separate IL-1040-X forms, even if the extended due date has passed. If you file separate IL-1040-X forms, each spouse must list his or her own income separately even if one spouse did not have any Illinois income. Any spouse filing as a nonresident or part-year resident must also attach a completed Schedule NR.

- if you filed your federal return using the "married filing separately" filing status, you must file your Illinois return using the same filing status.

**Line D** – Check the appropriate box. If you check the nonresident or part-year resident box, attach a completed Schedule NR.

**Line E** – Check the box that describes your change. The date needed for

- NOL changes and federal changes that resulted in an overpayment is the date you received a federal finalization notice from the IRS stating that they have accepted your change either by paying a refund or by final assessment, agreement, or judgment, not the date you filed your U.S. 1040X.
- federal changes that resulted in a tax increase is the date you filed your U.S. 1040X and paid the tax due.

### Step 2 – Reason for filing (Everyone filing this return must complete this step.)

**Lines F through H** – Follow the instructions on the form.

### Step 3: Financial information

The line numbers on your Form IL-1040-X may not match the line numbers on your original return.

If you filed Schedule CR, Credit for Tax Paid to Other States; Schedule NR; or Schedule ICR, Illinois Credits, with your original Form IL-1040 or previously filed Form IL-1040-X, you must complete and attach corrected schedules. For each change you make, you must give an explanation in Step 2, Line H.

### Corrected figures

Complete this column using your corrected figures, following the instructions for each line.

## Income – Lines 1 through 4

**Line 1** – Adjusted gross income: If your adjusted gross income is changing due to a federal change, you must attach proof of federal finalization.

**Note** If you are changing Line 1 to take an NOL deduction, see “General Information” for additional details.

**Line 2** – If you are changing the amount on this line, see the Form IL-1040 Instructions.

**Line 3** – You must provide an explanation in Step 2, Line H, if this is a change to your previously filed return.

Complete Schedule M, Other Additions and Subtractions for Individuals, and write the total addition amount from Schedule M.

## Subtractions – Lines 5 through 7

Any changes that you make to the subtractions on Lines 5 through 7 require corrected support for that line. See Form IL-1040-X for a list of supporting documents that you must attach. You must also provide an explanation in Step 2, Line H, if this is a change to your previously filed return.

**Line 7** – Complete Schedule M, and write the total subtraction amount from Schedule M.

**Lines 8 and 9** – Follow the instructions on the form.

## Exemptions – Line 10

**Line a** – Write the total number of exemptions for yourself and your dependents, as corrected.

**Line b** – Write the total number of exemptions for being 65 or older or blind, as corrected.

**Line c** – Follow the instructions on the form.

If you change the number of your exemptions, you must explain the reason, in detail, in Step 2, Line H.

**Note** See the IL-1040 instructions for more information.

**Attach** a copy of your original federal return or amended U.S. Form 1040X that supports the exemption change.

## Net Income – Lines 11 and 12

**Line 11 – Residents:** Figure your net income by subtracting Line 10c from Line 9, and write the result.

**Line 12 – Nonresidents and part-year residents:** Write your Illinois base income from Schedule NR, Step 5, Line 46. **Attach** Schedule NR with amended figures.

## Total Tax – Lines 13 through 15

**Line 13 – Residents:** Multiply your net income on Line 11 by 3% (.03). **Nonresidents and part-year residents:** Write the corrected tax before recapture of investment credits from Schedule NR, Step 5, Line 52.

**Line 14** – If you are recapturing investment credits, write the amount from Schedule 4255, Recapture of Investment Tax Credits.

**Lines 15 and 16** – Follow the instructions on the form.

## Nonrefundable Credits – Lines 17 through 21

**Line 17** – If you claimed a credit for tax paid to other states on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule CR and attach it.

**Line 18** – If you claimed property tax and K-12 education expense credit from Schedule ICR on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule ICR and attach it to your Form IL-1040-X.

**Line 19** – If you claimed a credit from Schedule 1299-C on your

previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule 1299-C and attach it to your Form IL-1040-X.

**Lines 20 and 21** – Follow the instructions on the form.

**Note** A change in your tax may result in a change to the credits allowed on Lines 17, 18, and 19.

## Previous Overpayments, Contributions and Use Tax – Lines 22 and 23

**Line 22** – Write the total amount of

- **all previous** overpayments, refunds, and credit carryforward from your original Illinois Income Tax return, previously filed Form IL-1040-X, or for any other reason. Do not include interest that you have received.
- **your original voluntary contributions** to state funds. You may not change the amount of your voluntary contributions to state funds made on your original Illinois Income Tax return.
- **use tax** reported on your original Form IL-1040.

**Line 23** – Follow the instructions on the form.

## Payments and Refundable Credits – Lines 24 through 29

**Line 24** – If the amount of your Illinois Income Tax withheld changes from your previously filed return, attach copies of all W-2 forms.

**Line 25** – Write the total of estimated tax payments you made with Form IL-1040-ES, payments made with Form IL-505-I, and previous overpayment that was credited to the year you are changing.

**Line 26** – Write the amount of pass-through entity payments made on your behalf by a partnership, S-corporation, or trust. Attach Schedule K-1-P or K-1-T if payments were made on your behalf but you did not previously claim them. Attach corrected Schedule K-1-P or K-1-T, if you are amending the amount of previously claimed credit.

**Line 27** – If you claimed an Earned Income Tax credit on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule ICR, and attach it to your Form IL-1040-X.

**Line 28** – If you made payments with your Form IL-1040, previously filed Form IL-1040-X, or for any other reason (*i.e.*, paying your electronic return balance due or responding to a notice or a bill), write the total of all tax payments made.

**Line 29** – Follow the instructions on the form.

## Step 4: Refund or balance due

**Line 30** – Follow the instructions on the form. We will figure any interest due to you and include it in your refund check.

**Note** You may **not** request any overpayment to be credited to estimated tax.

**Line 31** – Follow the instructions on the form.

**Line 32** – We encourage you to let us figure the amount of any penalties and interest you owe, and send you a bill for any amount due. However, if you prefer, you may figure the penalties and interest you owe yourself. For more information, see Publication 103, Penalties and Interest for Illinois Taxes. To receive a copy of this publication, see “What if I need additional forms or schedules?” on Page 2.

## Penalties and Interest

The following penalties must be paid unless you can show that the failure to timely file or pay is due to reasonable cause and not due to willful neglect.

**You may owe**

- **a late-filing penalty** if you do not file a processable return by the extended due date.

**Note** Changes resulting from a net operating loss (NOL) or capital loss carryback will not affect this penalty.

- a **late-payment penalty** if you do not pay the tax you owe (including estimated payments) on time.

**Note** If you file an amended return before the extended due date, this penalty will be adjusted based on the newly reported tax. Also, tax required to be shown on the return that was not previously reported is subject to this penalty if not paid by the original due date of the return. Changes resulting from a net operating loss (NOL) or capital loss carryback will not affect this penalty.

If you are filing to report a federal change, this penalty will not be assessed if you file Form IL-1040-X and pay the tax you owe within 120 days of the federal acceptance date shown in Step 1, Line E.

- a **bad check penalty** if your remittance is not honored by your financial institution.
- a **cost of collection fee** if you do not pay the amount you owe within 30 days of the date printed on any bill, we send you.
- **interest** on unpaid tax from the day after the original due date of your return through the date you pay the tax.

**Note** If you received interest on the refund from your original Illinois Income Tax return or a previously filed amended return and you file an amended return that either reduces the original refund amount or results in a balance due, you must pay back the interest on the portion of the refund that you received in error.

**Lines 33 and 34** – Follow the instructions on the form.

## Step 5 – Sign and date

**Sign and date** your return. If you have filed jointly, your spouse must also sign the return. If you are filing for a minor, as a parent or guardian, you must sign the return. Staple all required copies of forms and schedules, powers of attorney, and letters of estate or office to the back of the return. If you paid someone to prepare your return, that individual must also sign and date the return and provide his or her tax identification number and a daytime phone number.

**DEPARTMENT'S**

**EXHIBIT B**



## General Information

### Should I file Form IL-1040-X?

You should file Form IL-1040-X, Amended Individual Income Tax Return, if you need to change a previously filed Form IL-1040, Individual Income Tax Return, due to a change that affects items used to figure your Illinois net income or credits.

Your change can occur from a state change or a federal change, *i.e.*,

- an amendment of your federal income tax return,
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### Which revision of Form IL-1040-X should I use?

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- three years after the extended due date,
- three years after the date your original return was filed, or
- one year after the date your Illinois tax was paid,

whichever is latest.

If your change increases the tax you owe to Illinois, you should file a Form IL-1040-X and pay the tax, penalty, and interest as soon as you realize that it is owed.

**Federal change (including NOLs)** – If your federal change decreases your Illinois tax, and you want a refund, you must file an amended return (claim for refund) within two years plus 120 days of federal finalization.

**Note** If your federal change resulted in an overpayment or if you claimed a net operating loss (NOL) carryback, you should **not file this form** until you receive a federal finalization notification from the IRS stating that they have accepted your change either by paying a refund or by final assessment, agreement, or judgment.

If your federal change increases your Illinois tax, you must file a Form IL-1040-X and pay any additional tax within 120 days of the federal finalization date (the date you filed your U.S. Form 1040-X and paid the tax due), or you may be assessed a late-payment penalty.

**Note** Any Form IL-1040-X filed prior to the automatic extension date will be considered a "corrected" rather than an amended return and any penalties and interest may be refigured.

In most cases, if you file an amended return after the extended due date, any penalty for late payment of estimated tax will remain as originally assessed.

You must file Form IL-1040-X, along with proper supporting documentation, for both corrected and amended returns.

**Note** If your amended return is filed incorrectly and additional liability is due, we must issue you a notice of deficiency within two years from the date you filed Form IL-1040-X. If you fail to file an amended return when required, we may issue you a notice of deficiency at any time.

### What if I have a net operating loss deduction?

In general, Illinois allows you to take the same NOL carryback or carryforward deduction allowed on your federal income tax return. A carryback deduction is a "federal change" that reduces your federal adjusted gross income on Step 3, Line 1. Check the box marked "NOL" on Step 1, Line F, and indicate the date the IRS accepted your carryback deduction. This will usually be the date on which the IRS issued your refund check. You must file Form IL-1040-X within 2 years plus 120 days after that date to receive a refund.

Illinois does not allow you to deduct the same NOL twice. To prevent a double deduction of your NOL, your deduction for a tax year cannot be greater than the federal NOL available for deduction in that year minus the federal NOL available to carry to later years. This is the amount reported as "Modified Taxable Income" on federal Form 1045, Application for Tentative Refund, Schedule B, Line 9.

**Attach** a copy of your federal Form 1045 Schedule B.

If you are a resident in the year you are allowed a federal NOL deduction, Illinois allows you to deduct the entire amount even if you were not a resident in the year the loss occurred. If you are a nonresident or part-year resident in the year you are allowed the federal NOL deduction, see the instructions for Step 3, Line 19, of Illinois Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax.

**Example:** In tax year 2009, Paul Taxpayer, a nonresident individual, has \$20,000 in federal net losses from Partnership A and \$180,000 in net losses from Partnership B. He has \$100,000 in income from other sources, so his adjusted gross income for 2009 is a net operating loss of \$100,000. Federally, Paul Taxpayer carries the entire \$100,000 loss back to 2007.

Ten percent of the \$100,000 net operating loss deduction for 2007 is attributable to Partnership A (Partnership A's \$20,000 loss in 2009 is divided by the \$200,000 in total losses incurred from partnerships in 2009) and 90 percent of the net operating loss deduction is attributable to Partnership B. See the Schedule NR Instructions for Step 3, Line 19, to determine the amount of each partnership's net operating loss deduction amount that is allocated or apportioned to Illinois.

### What should I attach to Form IL-1040-X when claiming an NOL?

In order to support a refund claimed as a result of a finalized federal NOL carryback, you must attach the following information:

- a copy of your U.S. 1040X, Amended U.S. Individual Income Tax Return, or U.S. 1045, and
- a copy of your U.S. 1045 Schedule B, and
- a copy of any refund check and any other notification you received from the IRS stating that they accepted the changes shown on your U.S. 1040X or U.S. 1045.

**Note** You must complete and attach U.S. 1045 Schedule B, even if you did not file a U.S. 1045 for this year.

**Note** If you are filing a same-sex civil union return, attach a federal "as-if-married" return or schedule for all lines requiring U.S. forms to be attached. See the Line C instructions for details.

In addition, if you were a nonresident or part-year resident of Illinois in the carryback year, you must also attach

- copies of the U.S. 1040, Pages 1 and 2, and Schedules C, E, and F filed for the **loss year**. Include supporting information that identifies the partnerships and S corporations (names and FEINs) whose losses are included in Schedules C, E and F and the amount of loss incurred by each entity.
- copies of Schedule K-1-P or other documentation for the **carryback year** for each partnership or S corporation through which you incurred an NOL in the loss year and that identifies each entity's apportionment formula for the carryback year.

If you fail to attach the required information to your Form IL-1040-X, your refund may be delayed or denied.

### What is my exemption allowance?

You may generally claim a \$2,000 exemption for yourself and each of your dependents. The additional exemption allowance for taxpayers and their spouses who are 65 years of age or older or who are legally blind is \$1,000. See the Form IL-1040 instructions for details.

### What must I attach to my Form IL-1040-X?

If you are filing Form IL-1040-X because

- you filed a U.S. Form 1040X to report a federal change other than an NOL carryback, you must include a copy of that form. If your federal change resulted in an overpayment, you must also attach a copy of the notification you received from the IRS stating that they accepted the changes shown on your U.S. Form 1040X; *e.g.*, a refund check, "Statement of Account," agreement, or judgment. If you do not have a copy of this notification, please contact the IRS to request a tax account transcript.
- of a change made by the IRS, you must include copies of all the federal examining officer's reports, including preliminary, revised, corrected, and superseding reports.

- of any other changes, see the instructions for Form IL-1040 and any schedules to see what to attach.

**Note** If the change you are making requires a supporting schedule or form, you must attach it to your Form IL-1040-X. **Without proper attachments, we may partially or totally deny your claim.**

**Note** If you are filing a same-sex civil union return, attach a federal "as-if-married" return or schedule for all lines requiring U.S. forms to be attached. See the Line C instructions for details.

**Note** Keep all state and federal forms with your tax records. You must send us additional information if we request it.

### What if my claim is denied?

If we deny your refund claim by a written notice of denial, you may file a written protest within 60 days and request a hearing. If you do not hear from us within six months after you have filed your claim, you may file a written protest at any time and request a hearing.

### What if I need assistance?

If you need assistance,

- visit our website at [tax.illinois.gov](http://tax.illinois.gov),
- call our Taxpayer Assistance Division at **1 800 732-8866** or **217 782-3336**,
- call our TDD (telecommunications device for the deaf) at **1 800 544-5304**, or
- write to us at the Illinois Department of Revenue, P.O. Box 19044, Springfield, Illinois 62794-9044.

### What if I need additional forms or schedules?

If you need additional forms or schedules,

- visit our website at [tax.illinois.gov](http://tax.illinois.gov),
- call our 24-hour Forms Order Line at **1 800 356-6302**, or
- write to us at the Illinois Department of Revenue, P.O. Box 19010, Springfield, Illinois 62794-9010.

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## Step-by-Step Instructions

**Note** You must file a separate Form IL-1040-X for each year you are amending.

### Step 1: Personal information

**Line A** – Print or type your Social Security number(s), name(s), and current address.

**Line B** – Check the box if your Social Security number(s), name(s), or address are different on this return than on any previously filed return.

**Line C** – Check the box to indicate your filing status. If your filing status is different from your previously filed return, explain your change in Step 2, Line I.

**Note** In general, most taxpayers should use the same filing status as on their federal return. However,

- if you are married, you filed a joint federal return, and you are an injured spouse (*e.g.*, your spouse owes a liability, for which you are not responsible, to a government agency), you should file separate Illinois returns using the "married filing separately" filing status. If you file a joint Illinois return, we may take the entire refund to pay your spouse's liability. If you did not make this election on your original Form IL-1040, you may file Form IL-1040-X to make or revoke this election only if the extended due date of the return has not passed, and once the election is made it is irrevocable.
- if either you or your spouse is an Illinois resident and the other is a part-year resident or nonresident, and you elect to file a joint return, you will both be treated as residents. If you originally filed a joint return, but did not treat both yourself and your spouse as Illinois residents, you must correct that error by either filing a joint Form IL-1040-X treating yourselves as Illinois residents or by filing separate IL-1040-X forms, even if the extended due date has

passed. If you file separate IL-1040-X forms, each spouse must list his or her own income separately even if one spouse did not have any Illinois income. Any spouse filing as a nonresident or part-year resident must also attach a completed Schedule NR.

- if you filed your federal return using the "married filing separately" filing status, you must file your Illinois return using the same filing status.
- if you were in a civil union as of December 31, 2011, you and your civil union partner must file with Illinois using either the "married filing jointly" or "married filing separately" filing status. If you and your partner are of the opposite sex, you are treated as spouses for federal income tax purposes and must follow the instructions above. However, since a same-sex civil union couple may not file a federal return using a married filing status,
  - if you and your same-sex partner choose to file a joint Illinois return, you must complete a federal "as-if-married-filing-jointly" return, for Illinois purposes only.
  - if you and your same-sex partner choose to file separate Illinois returns, you must complete federal "as-if-married-filing-separately" returns, for Illinois purposes only.

Complete your federal "as-if-married" return(s), including all schedules and attachments, applying all the federal rules for the married filing status you choose. Enter the federal "as-if-married" return information where Illinois requires federal information. **Do not** file your federal "as-if-married" return(s) with the IRS. If you did not file your original return as married, you must correct that error by filing Form IL-1040-X using a married filing status, even if the extended due date has passed.

**Note** If you choose to file a joint Illinois return, you and your partner will both be liable for the joint tax liability, and each partner's share of any joint refund may be applied against unpaid liabilities of the other partner.

**Line D** – Check the appropriate box. If you check the nonresident or part-year resident box, attach a completed Schedule NR.

**Line E** – Check the box if you are in a same-sex civil union. **Attach** your federal "as-if-married" return, including all schedules and attachments for all lines requiring U.S. forms to be attached.

**Line F** – Check the box that describes your change. The date needed for

- NOL changes and federal changes that resulted in an overpayment is the date you received a federal finalization notice from the IRS stating that they have accepted your change either by paying a refund or by final assessment, agreement, or judgment, not the date you filed your U.S. 1040X.
- federal changes that resulted in a tax increase is the date you filed your U.S. 1040X and paid the tax due. Failure to provide this date could result in an assessment of a late-payment penalty.

## Step 2 – Reason for filing (Everyone filing this return must complete this step.)

**Lines G through I** – Follow the instructions on the form.

## Step 3: Financial information

The line numbers on your Form IL-1040-X may not match the line numbers on your original return.

If you filed Schedule CR, Credit for Tax Paid to Other States; Schedule NR; or Schedule ICR, Illinois Credits, with your original Form IL-1040 or previously filed Form IL-1040-X, you must complete and attach corrected schedules. For each change you make, you must give an explanation in Step 2, Line I.

### Column A - As originally reported or adjusted

Complete this column using the figures from your most recently filed tax return for the year you are changing. These figures may be from your original Form IL-1040, electronically filed return, previously filed Form IL-1040-X, or an adjustment we made to your return.

### Column B - Corrected figures

Complete this column using your corrected figures, following the instructions below for each line.

#### Income – Lines 1 through 4

**Line 1** – Adjusted gross income: If your adjusted gross income is changing due to a federal change, you must attach proof of federal finalization.

**Note** If you are changing Line 1 to take an NOL deduction, see "General Information" for additional details.

**Line 2** – If you are changing the amount on this line, see the Form IL-1040 Instructions.

**Line 3** – You must provide an explanation in Step 2, Line I, if this is a change to your previously filed return.

Complete Schedule M, Other Additions and Subtractions for Individuals, and write the total addition amount from Schedule M.

#### Base Income – Lines 5 through 9

Any changes that you make to the subtractions on Lines 5 through 7 require corrected support for that line. See Form IL-1040-X for a list of supporting documents that you must attach. You must also provide an explanation in Step 2, Line I, if this is a change to your previously filed return.

**Line 7** – Complete Schedule M, and write the total subtraction amount from Schedule M.

**Lines 8 and 9** – Follow the instructions on the form.

#### Exemptions – Line 10

**Line a** – Write the total number of exemptions for yourself and your dependents, as corrected.

**Line b** – Write the total number of exemptions for being 65 or older or blind, as corrected.

**Line c** – Follow the instructions on the form.

If you change the number of your exemptions, you must explain the reason, in detail, in Step 2, Line I.

**Note** See the IL-1040 instructions for more information.

**Attach** a copy of your original federal return or amended U.S. Form 1040X that supports the exemption change.

#### Net Income – Lines 11 and 12

**Line 11 – Residents:** Figure your net income by subtracting Line 10c from Line 9, and write the result.

**Line 12 – Nonresidents and part-year residents:** Write your Illinois base income from Schedule NR, Step 5, Line 46. **Attach** Schedule NR with amended figures.

#### Tax – Lines 13 through 15

**Line 13 – Residents:** Multiply your net income on Line 11 by 5% (.05). **Nonresidents and part-year residents:** Write the corrected tax from Schedule NR, Step 5, Line 52.

**Line 14** – If you are recapturing investment credits, write the amount from Schedule 4255, Recapture of Investment Tax Credits. **Attach** Schedule 4255 with amended figures.

**Lines 15 and 16** – Follow the instructions on the form.

#### Nonrefundable Credits – Lines 17 through 21

**Line 17** – If you claimed a credit for tax paid to other states on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule CR and attach it.

**Line 18** – If you claimed property tax and K-12 education expense credit from Schedule ICR on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule ICR and attach it to your Form IL-1040-X.

**Line 19** – If you claimed a credit from Schedule 1299-C on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule 1299-C and attach it to your Form IL-1040-X.

**Lines 20 and 21** – Follow the instructions on the form.

**Note** A change in your tax may result in a change to the credits allowed on Lines 17, 18, and 19.

#### Other Tax – Lines 22 and 23 –

**Line 22** – If you are changing the amount on this line, see the Form IL-1040 Instructions.

**Line 23** – Follow the instructions on the form.

#### Previous Overpayments, Contributions and Use Tax – Lines 24 and 25

**Line 24** – Write the total amount of

- **all previous overpayments, refunds, and credit carryforward** from your original Illinois Income Tax return, previously filed Form IL-1040-X, or for any other reason. Do not include interest that you have received.
- **your original voluntary contributions** to state funds. You may not change the amount of your voluntary contributions to state funds made on your original Illinois Income Tax return.
- **use tax** reported on your original Form IL-1040.

**Line 25** – Follow the instructions on the form.

## Payments and Refundable Credits – Lines 26 through 31

**Line 26** – If the amount of your Illinois Income Tax withheld changes from your previously filed return, attach copies of all W-2 forms.

**Line 27** – Write the total of estimated tax payments you made with Form IL-1040-ES, payments made with Form IL-505-I, and previous overpayment that was credited to the year you are changing.

**Line 28** – Write the amount of pass-through entity payments made on your behalf by a partnership, S-corporation, or trust. Attach Schedule K-1-P or K-1-T if payments were made on your behalf but you did not previously claim them. Attach corrected Schedule K-1-P or K-1-T, if you are amending the amount of previously claimed credit.

**Line 29** – If you claimed an Earned Income Tax credit on your previously filed return or if you are filing Form IL-1040-X because you qualified for this credit but did not previously claim it, you must correct or complete Schedule ICR, and attach it to your Form IL-1040-X.

**Line 30** – If you made payments with your Form IL-1040 or a previously filed Form IL-1040-X (including penalties and interest) or for any other reason (*i.e.*, paying your electronic return balance due or responding to a notice or a bill), write the total of all payments made.

**Line 31** – Follow the instructions on the form.

## Step 4: Refund or balance due

**Line 32** – Follow the instructions on the form. We will figure any interest due to you and include it in your refund check.

**Note** You may **not** request any overpayment to be credited to estimated tax.

**Line 33** – Follow the instructions on the form.

**Line 34** – We encourage you to let us figure the amount of any penalties and interest you owe, and send you a bill for any amount due. However, if you prefer, you may figure the penalties and interest you owe yourself. For more information, see Publication 103, Penalties and Interest for Illinois Taxes. To receive a copy of this publication, see “What if I need additional forms or schedules?” on Page 2.

## Penalties and Interest

The following penalties must be paid unless you can show that the failure to timely file or pay is due to reasonable cause and not due to willful neglect.

### You may owe

- a **late-filing penalty** if you do not file a processable return by the extended due date.

**Note** Changes resulting from a net operating loss (NOL) or capital loss carryback will not affect this penalty.

- a **late-payment penalty** if you do not pay the tax you owe (including estimated payments) on time.

**Note** If you file an amended return before the extended due date, this penalty will be adjusted based on the newly reported tax. Also, tax required to be shown on the return that was not previously reported is subject to this penalty if not paid by the original due date of the return. Changes resulting from a net operating loss (NOL) or capital loss carryback will not affect this penalty.

If you are filing to report a federal change, this penalty will not be assessed if you file Form IL-1040-X and pay the tax you owe within 120 days of the federal acceptance date shown in Step 1, Line F.

- a **bad check penalty** if your remittance is not honored by your financial institution.
- a **cost of collection fee** if you do not pay the amount you owe within 30 days of the date printed on any bill, we send you.
- **interest** on unpaid tax from the day after the original due date of your return through the date you pay the tax.

**Note** If you received interest on the refund from your original Illinois Income Tax return or a previously filed amended return and you file an amended return that either reduces the original refund amount or results in a balance due, you must pay back the interest on the portion of the refund that you received in error.

**Lines 35 and 36** – Follow the instructions on the form.

## Step 5 – Sign and date and third party designee

**Sign and date** your return. If you have filed jointly, your spouse must also sign the return. If you are filing for a minor, as a parent or guardian, you must sign the return. Staple all required copies of forms and schedules, powers of attorney, and letters of estate or office to the back of the return. If you paid someone to prepare your return, that individual must also sign and date the return and provide his or her tax identification number and a daytime phone number.

Choose a **third party designee** (optional). If you want to allow another person to discuss this return with us, check the box and print the designee's name and telephone number. The authorization will allow your designee to answer any questions that arise during the processing of your return, call us with questions about your return, and receive or respond to notices we send. The authorization will automatically end no later than one year after you file your amended return. You may revoke the authorization at any time by calling or writing us.

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>JOHN P. PEARL</b>	)	
	)	
<b>Petitioner</b>	)	
<b>v.</b>	)	<b>14-TT-0066</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

TO: Karen M. Stumpe  
Kavanagh, Scully, Sudow,  
White & Frederick, P.C.  
301 S.W. Adams St., Suite 700  
Peoria, IL 61602  
(309) 676-1381  
[karenstumpe@ksswf.com](mailto:karenstumpe@ksswf.com)

Please take notice that the undersigned Representative for the Illinois Department of Revenue (the "Defendant") certifies that, on May 16, 2014, he served the Department's Answer to John P. Pearl's Petition by electronic mail at the electronic mail address shown above at the time shown on the electronic transmission confirmation.

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Rickey A. Walton  
Special Assistant Attorney General

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