

# SB3215



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3215

Introduced 2/1/2012, by Sen. Susan Garrett

#### 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. Effective immediately.

LRB097 17607 HLH 62814 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, such loss shall be allowed as a net operating  
21 loss carryover to each of the 12 taxable years following  
22 the taxable year of such loss, except as provided in  
23 subsection (d).

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

26 (A) For losses incurred in tax years ending prior

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

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

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

22 (c) Notwithstanding any other provision of this Act, for  
23 each taxable year ending on or after December 31, 2008, for  
24 purposes of computing the loss for the taxable year under  
25 subsection (a) of this Section and the deduction taken into  
26 account for the taxable year for a net operating loss carryover

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

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



1 no taxable year for which a deduction is disallowed under this  
2 subsection, ~~or for which the deduction would exceed \$100,000 if~~  
3 ~~not for this subsection,~~ shall be counted.

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

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

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

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

19 (Source: P.A. 96-1496, eff. 1-13-11; 97-507, eff. 8-23-11;  
20 97-636, eff. 6-1-12.)

21 Section 95. No acceleration or delay. Where this Act makes  
22 changes in a statute that is represented in this Act by text  
23 that is not yet or no longer in effect (for example, a Section  
24 represented by multiple versions), the use of that text does  
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other  
2 Public Act.

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