



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
P.O. BOX 8911
WILMINGTON, DELAWARE 19899-8911

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 99-1

DATE: January 15, 1999

SUBJECT: Personal Income Tax - Suspended Losses

**CONTACT: JAMES A. STEWART, III
(302) 577-8170**

Questions have arisen concerning the reporting on Delaware individual income tax returns of certain suspended amounts. Until tax year 1998, Delaware married taxpayers who filed joint federal returns but separate Delaware returns were required to re-compute their taxable incomes on the premise of separate federal filing. Burpulis v. Director, Del. Supr., 498 A.2d 1082 (1985). Under some circumstances the reconstruction of federal adjusted gross income resulted in differences between allowable federal and State deductions where such deductions were subject to caps (e.g., the IRC § 469 cap on passive activity losses). Using the federal analogy, these Delaware losses are suspended until they could have been recognized under federal law had the married taxpayers filed separate federal returns.

Taxpayers in this situation should include the difference between the Delaware and federal suspended amount on the 1998 Delaware resident form as follows: (1) on line 32 if Delaware suspended losses exceed those recognized for federal purposes; and (2) on line 27 if Delaware losses are less than federal.

On the non-resident return, report such differences (provided the deduction is properly sourced in Delaware) as follows: (1) on line 25 of the 1998 non-resident return if Delaware suspended losses exceed those recognized for federal purposes; and (2) on line 19 if Delaware losses are less than federal.

William M. Remington
Director of Revenue