

General Information Letter: An institution that provides only preschool and kindergarten-level education is not a school qualifying for the education expense credit.

January 24, 2006

Dear:

This is in response to your letter dated January 2, 2006, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

The Department of Revenue is currently denying my claim for the educational deduction for years 2000, 2001, 2003, and 2004. After numerous communications with the Complaint Resolution Department, they have referred me to you. The explanation provided to me is that the school that my daughters attended is a day care center and not a kindergarten. The school in question, KINDERGARTEN and PRE-SCHOOL (CITY), offers both schooling and day care services. It is my understanding that KINDERGARTEN and PRE-SCHOOL meets the requirements for the educational deduction for the following reasons:

- ?? The services provided are named and marketed as kindergarten schooling
- ?? The school has provided documentation that it meets the requirements of Section 26-1 of the Illinois School Code; specifically that it:
 - o provides more than 176 days of instruction
 - o provides superior quality schooling in the subjects taught to children who attend public school kindergarten classes.
 - o provides instruction in English
- ?? Classes were taught by certified teachers
- ?? The CITY Public schools accepted transcripts and similar documentation from KINDERGARTEN and PRE-SCHOOL. KINDERGARTEN and PRE-SCHOOL students have performed above average upon attendance in CITY schools.
- ?? Kindergarten classes were taught in a classroom physically separated from the pre-school activities. Schooling activities were suitably planned for Kindergarten students and were distinct from pre-school activities for younger students.

Please note that I am providing you with evidence for the above statements. Similar documentation was provided to the Complaint Resolution Department. The Complaint Resolution Department reviewed the documentation for almost a year; it then ruled in my favor for years 2003 and 2004 this past May. In December 2005, after receiving a demand for payment for the deduction, I was informed that KINDERGARTEN and PRE-SCHOOL was now considered a day care facility. No rationale was provided for this designation or why the previous decision was reversed. No other notification was provided.

I am asking the following of the Legal Department:

- ?? To suspend the demand for payment until the issue of KINDERGARTEN and PRE-SCHOOL eligibility is definitively resolved,
- ?? To make a definitive determination resolving the issue of KINDERGARTEN and PRE-SCHOOL eligibility (preferably in my favor),
- ?? To provide the rationale for how the eligibility issue was determined,
- ?? To provide a written copy of my appeal file and documentation of any/all decisions made by the IDR with regards to my appeal, and
- ?? To audit the May 2005 refunds for 2003 and 2004. [I was informed by Complained Resolution Department that refunds were issued. I have been unable to verify that information.]
 - o Were these refunds provided to me?
 - o If so, how were thee refunds provided (direct deposit or by check)?
 - o If by direct deposit, on what date?
 - o If by check, has the check been cashed?
 - o Were two refunds provided or one?
 - o What were the refund amounts?

Response

Section 201(m) of the Illinois Income Tax Act (35 ILCS 5/201) provides that the education credit is allowed for certain expenses incurred at a "school," and defines "school" to mean:

any public or nonpublic elementary or secondary school in Illinois that is in compliance with Title VI of the Civil Rights Act of 1964 and attendance at which satisfies the requirements of Section 26-1 of the School Code . . .

Section 26-1 of the School Code (105 ILCS 5/26-1) requires attendance at school by "any child between the ages of 7 and 17 years." A child may fulfill this obligation by attending the local public school or by attending "a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools." According to Section 26-2 of the School Code, the grades to which this provision refers are grades 1 through 12. Accordingly, attendance at a kindergarten is not required by the School Code, while 7-year-old attending a kindergarten or an equivalent would be truant. Accordingly, attendance at an institution offering no education higher than kindergarten does not meet the requirements of Section 26-1, and that institution is therefore not a "school" for purposes of the education expense credit.

Your letter and the documentation you provided indicate that KINDERGARTEN and PRE-SCHOOL provides only kindergarten and preschool education. Accordingly, it is not a "school" for purposes of the education expense credit.

Our records show no refunds have been paid for 2003 or 2004. On December 13, 2005, refund checks of \$66.11 and \$69.67 were mailed to you for 2000 and 2001, respectively. As of January 23, 2006, our records do not show that these checks have been cashed.

As stated above, this is a general information letter which does not constitute a statement of policy

IT 06-0003-GIL
January 24, 2006
Page 3

that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax