

General Information Letter: The education expense credit is not allowed for expenses incurred with a school outside the State of Illinois.

March 20, 2007

Dear:

This is in response to your letter dated February 16, 2007, in which you request a Private Letter Ruling. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of 86 Ill. Adm. Code Section 1200.110 appears to be contained in your request. The Private Letter Ruling will bind the Department only with respect to your family and your three school-aged children for the issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that you and your family and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

I am an Illinois taxpayer who works in Illinois and resides in CITY1, IL. My wife is also an Illinois resident. We have three school-aged children. This inquiry concerns our entitlement to claim the Education Expense credit under Section 201(m) of the Illinois Income Tax Act (35 ILCS 5/201(m)(West 2004)) for their education expenses.

All three children are full-time residents of the State of Illinois, are under the age of 21, and are enrolled in accredited nonpublic (i.e., private) schools which comply with Title VI of the Civil Rights Act of 1964 (42 USC §2000d) and attendance at which satisfies the requirements of Section 26-1 of the School Code (105 ILCS 5/26-1 (West 2004)). The institution attended by the two oldest children is the SCHOOL1, a fully accredited secondary school. The youngest child attends the SCHOOL2, a fully accredited elementary school. Both institutions have competitive admissions and are designed to provide rigorous academic training to intellectually gifted students. We enrolled our children in those schools because the local public school systems was unable to provide them with academic instruction appropriate to their abilities. Information on both School1 and the School2 is enclosed.

My children are fortunate enough to receive some scholarship aid. Their scholarships, however cover only part of the costs of their education. Currently, I pay a total of approximately \$27,000 per year in tuition, book fees, and lab fees to SCHOOL1 and the SCHOOL2 on the Children's behalf. Those sums are paid entirely from income earned in Illinois and taxed by Illinois. I have documentation for all the payments.

Last year, the property tax on our home exceeded \$4,600. Of that, approximately \$2,700 went to support the local public school district, which my children do not attend. Because I have undertaken to educate my children outside the public school system, the state has been spared the expense of educating them. Educational funds that would otherwise be required to provide educational services to my children can, instead, be used to educate the children of others.

These are precisely the circumstances the Education Expense Credit was designed to address. I was recently advised by a representative of your on-line support center, however,

that I could not claim the Credit for the sole reason that the schools in which my children are enrolled and to which they commute back and forth each day are located in CITY2, STATE.

For purposes of the Education Expense Credit, the Illinois Income Tax Act does define "qualifying school" as "any public or nonpublic elementary or secondary school in Illinois \*\*\*." The Department of Revenue, however, has taken the position that the Education Expense Credit may be taken for home school expenses, including fees for tuition, curriculum rental, and the purchase of books and workbooks substantially consumed during class activities. See Pub.-119(N-08/05). According to the Department, such expenses qualify for the credit "even if they were paid to an out-of-state company."

From a practical and policy perspective, the educational expenses I pay on behalf of my children are indistinguishable from those incurred by a parent who pays an out-of-state company for the services and materials required to provide an education to their children in the home. The situations cannot even be meaningfully differentiated on the basis of the situs of the educational program. Contemporary home schooling programs typically involve a combination of work in the home and at outside facilities. My children's education is no different. While most of their day is spent in the classrooms in STATE, they also devote an enormous amount of time at home in Illinois in the evenings and on weekends and holidays completing their academic assignments. Parents of home schoolers could unquestionably obtain credit for educational expenses attendant to the out-of-home component of their teaching programs, including lab and health club fees. The same should be true of the out-of-home component of the educational program we provide for our children.

There is no rational basis for differentiating the educational expenses I incur on behalf of my children from those incurred by parents who chose to home school and utilize materials and services from out-of-state vendors. To deny the educational expense credit to us, while granting it to the parents of home schoolers, would therefore contravene due process and equal protection guarantees under the United States and Illinois Constitutions. I would further suggest that permitting us to claim the credit on the same basis as home schoolers would have limited impact on the state treasury. That is so because, to our knowledge, the number of Illinois students who commute to out-of-state elementary and secondary schools is extremely small.

It is a well-settled principle that revenue statutes should be given a reasonable construction and that any uncertainty should be resolved in favor of the taxpayer. See *TTX Co. v. Whitley*, 313 Ill.App.3d 536 (2000). Statutes should also be construed in a way that will avoid serious constitutional questions whenever it is reasonably possible to do so. See *Villegas v. Board of Fire and Police Commissioners*, 167 Ill.2d 108, 124 (1995). For all of the foregoing reasons, we respectfully request a ruling that the educational expenses we pay to SCHOOL1 and the SCHOOL2 for tuition, books and lab fees on behalf of our children qualify for the educational expense credit just as similar expenses would qualify when incurred by parents who home school their children.

### **Ruling by Department**

The education expense credit is allowed pursuant to the Illinois Income Tax Act ("IITA," 35 ILCS 5/101 *et seq.*) Section 201(m) which states the following:

**(m) Education expense credit.**

Beginning with tax years ending after December 31, 1999, a taxpayer who is the custodian of one or more qualifying pupils shall be allowed a credit against the tax imposed by subsections (a) and (b) of this Section for qualified education expenses incurred on behalf of the qualifying pupils. The credit shall be equal to 25% of qualified education expenses, but in no event may the total credit under this subsection claimed by a family that is the custodian of qualifying pupils exceed \$500. In no event shall a credit under this subsection reduce the taxpayer's liability under this Act to less than zero. This subsection is exempt from the provisions of Section 250 of this Act.

For purposes of this subsection:

"Qualifying pupils" means individuals who (i) are residents of the State of Illinois, (ii) are under the age of 21 at the close of the school year for which a credit is sought, and (iii) during the school year for which a credit is sought were full-time pupils enrolled in a kindergarten through twelfth grade education program at any school, as defined in this subsection.

"Qualified education expense" means the amount incurred on behalf of a qualifying pupil in excess of \$250 for tuition, book fees, and lab fees at the school in which the pupil is enrolled during the regular school year.

"School" means 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, except that nothing shall be construed to require a child to attend any particular public or nonpublic school to qualify for the credit under this Section.

"Custodian" means, with respect to qualifying pupils, an Illinois resident who is a parent, the parents, a legal guardian, or the legal guardians of the qualifying pupils.

Emphasis added. As you can see, the law creating the education expense credit has several requirements that must be met for taxpayers to receive the education expense credit, such as pupils must be residents of the State of Illinois, must be under the age of 21 at the close of the school year, and the school which they attend must be *in Illinois*. The only way to change the law to provide people in your situation entitlement to the education expense credit is by legislative action.

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation or hearing and this ruling shall bind the Department only if the factual representations in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the factual representations in this ruling.

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Very truly yours,

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