

General Information Letter: No credit is allowed to a resident partner for unincorporated business tax paid to D.C. by the partnership, because that tax is imposed on the partnership rather than the partner.

May 15, 2009

Dear:

This is in response to your letter dated December 18, 2008, which was forwarded to me for review. The nature of your letter 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. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

Enclosed is Form 2848, Power of Attorney, authorizing the undersigned to represent the taxpayers for their 2007 Illinois Income Tax Return.

We have enclosed for reference, a copy of your notice dated November 13, 2008, assessing a tax of \$9,861.00 plus interest and penalties of \$2,380.90 to their 2007 Illinois income tax. The additional tax is due to the proposed disallowance of tax paid to the District of Columbia claimed as a credit. We believe the assessment is in error, as explained in the following letter.

Pursuant to Part 100 Income Tax Regulations, Subpart B Credits, Ill. Admin. Code 100.2197 Foreign Tax Credit (IITA Section 601(b)(3)), Illinois residents are allowed a credit for the income taxes paid to other states on income received and taxable by Illinois under the regular income tax. The credit is allowed only if the taxpayer filed a required tax return with that state and if the same income is taxed by both Illinois and the other state during the same tax year.

The tax qualifies for the credit only if it is imposed on or measured by income and is paid by an Illinois resident to another state on income that is also subject to Illinois Income Tax (Ill. Admin. Code 100.2197(b)(1)).

The instructions for Illinois Schedule CR state “for purposes of this schedule, state means any state of the United States, the District of Columbia . . .” (emphasis added).

The taxpayers are residents of the State of Illinois and annually file a Form IL-1040. For the calendar year 2007, the taxpayers claimed a credit on Schedule CR (copy attached) for taxes paid to the District of Columbia. Income of \$329,898 was included in Illinois base income and also subject to tax in DC. Federal Sch K-1 reporting the gross Federal income to the taxpayer and the details pertaining to the gain reported to the District of Columbia and taxes paid are incorporated in this Schedule K-1, a copy of which is attached.

The gain from the disposition of the District of Columbia property was reported on Form D-30, Unincorporated Business Franchise Tax Return. This form reports the apportioned taxable income and deductions allocable to DC. The net total taxable

income is subject to a tax of 9.975%. The tax claimed herein as a credit is a tax measured by income as required by Reg. 100.2197(b)(1) A&B. The taxpayer was not required to personally file a tax return with the District of Columbia, because the partnership of PARTNERSHIP filed the tax return Form D-30 as an unincorporated business and allocated the tax incurred to each partner.

The applicable Illinois statute and regulation also requires in order to qualify for the credit, the tax must be deductible on Federal Schedule A as an itemized deduction and not deducted in fixing base income. The taxpayers claimed the subject tax as a deduction on Schedule A and did not claim any tax in determining the base income subject to Illinois tax.

As summarized above, the taxpayers have met all the requirements to claim the applicable portion of \$32,907 of District of Columbia tax as a credit against their Illinois income tax. It is respectfully requested the applicable credit be allowed as claimed and all penalties and interest be abated.

Response

86 Ill. Admin. Code Section 100.2197(f) provides:

An Illinois resident individual who is a shareholder or partner claiming a foreign tax credit for the shareholder's or partner's share of personal income taxes paid to a foreign state on his or her behalf by a Subchapter S corporation or a partnership, respectively, must attach to his or her Illinois return a written statement from the Subchapter S corporation or partnership containing the name and federal employee identification number of the Subchapter S corporation or partnership and clearly showing the paid amount of foreign tax attributable to the shareholder or partner, respectively. Additionally, the statement must include the shareholder's or partner's share of the Subchapter S corporation's or partnership's items of income, deduction and exclusion in sufficient detail to allow computation of the amount of base income subject to tax under subsection (b)(4) of this Section. Taxes imposed directly on the Subchapter S corporation or the partnership are not eligible for the credit. (emphasis added)

As noted in your letter, the District of Columbia imposed its unincorporated business tax on PARTNERSHIP, not on its partners. The liability was not imposed on or paid by the Zs, and they are not entitled to a credit based on that tax.

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