

General Information Letter: The decision of the United States Supreme Court in Lunding requires a state to allow nonresidents to allocate to the state deductions for alimony paid.

July 12, 2011

Dear:

This is in response to your letter dated June 2, 2011, in which you request guidance. 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. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

According to the 2010 Form Schedule CR instructions for Column B, Non-Illinois Portion of Line 26, Alimony Paid, the total from Column A should be entered into Column B. These are also the same instructions for Lines 20, 28 and 29. The question I asked to your agents was "why should the entire (federal) amount from column A be reported in column B as a non-Illinois deduction?"

One answer was "because that is what the instructions say". Another answer was "all the alimony is non-illinois sourced even if it was paid by an Illinois resident to an Illinois resident". Another agent said the instructions to the form aren't worded correctly and I should only report the alimony paid to Non-Illinois residents in Column B. None of your agents could explain the reasoning behind their answers or direct me to a statute citing facts.

I mentioned to one of the agents that our tax software was including the entire amount from column A in column B which was resulting in a net negative amount of non-Illinois income and therefore eliminating any tax credit allowed for taxes paid to other states. The agent suggested I complete the form by hand and not include any amount in column B, but the agent couldn't tell me if that was correct or not based upon his interpretation of the form's instructions for Line 26.

I have attached two scenarios to illustrate why this question is relevant. In Scenario #1, I've included the \$90,000 of alimony in Line 26 of Column B which results in no other state tax credit being allowed. In Scenario #2, I have not include any amount in Column B. Scenario #2 results in an allowance for other states tax credit in the amount of \$2,500.

We are requesting guidance on the proper reporting method and ask that you consider revising the instructions to the Form CR for future clarification benefiting taxpayers, preparers, and your department's agents.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows Illinois residents a credit for taxes paid to other states. That section provides, in part:

the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year.

In *Lunding v. N.Y. Tax Appeals Tribunal*, 522 U.S. 287 (1998), the United States Supreme Court held that states could not discriminate against nonresidents by denying them the same deduction for alimony paid that would be allowed to residents. Accordingly, Illinois allows nonresidents to allocate the full amount of the federal deduction for alimony paid to Illinois in determining their Illinois net income. See the instructions to Line 30 of the Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax. Consistent with this allocation, the limit on the credit for taxes paid to other states in Section 601(b)(3) must be computed by allocating the deduction for alimony paid to other states as if they followed the same allocation principles as Illinois.

The instructions to the Schedule CR, Credit for Taxes Paid to Other States, correctly apply the statute.

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