

General Information Letter: Taxpayer whose principal residence is in Illinois is entitled to the credit for property taxes paid on that residence, despite being a nonresident because he or she is only present in Illinois pursuant to active duty military assignment.

July 28, 2011

Dear:

This is in response to your letter dated March 10, 2011 in which you state the following:

We have received a return correction notice regarding our Illinois state taxes. Our refund was changed from \$412 to \$176 based on the issue of property tax. There are two explanations as to why we are not eligible. We understand the first, "because we were not Illinois residents in the prior tax year." It is the second line that makes us question the validity, "if you moved into Illinois during the tax year, you are not eligible for a property tax credit for this tax year."

We were both active duty military when we moved to Illinois in 2006 and have been paying property tax ever since. When we retired in 2010, we changed our residency to Illinois as we own a home and work here. We were not legal residents for the entire year as far as the military was concerned but we have been physical residents for years.

We spoke to George at the Illinois Department of Revenue and Roger at the Illinois Property Tax Credit office. Both men told us that we are not eligible but neither can show us definitively where in the regulations/publications our situation applies. We have reviewed Publication 108 and Section 208 but are unable to find anything that shows we are not eligible as physical residents that have been paying property tax for 4 years. We were instructed to contact your office for further clarification. Any assistance with this issue is greatly appreciated. A copy of the correction notice is attached for your convenience.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 208 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) relates to the property tax credit allowed for Illinois residents:

Sec. 208. Tax Credit for Residential Real Property Taxes.

Beginning with tax years ending on or after December 31, 1991, every individual taxpayer shall be entitled to a tax credit equal to 5% of real property taxes paid by such taxpayer during the taxable year on the principal residence of the taxpayer. ...

Under the system of property taxation existing in Illinois, property taxes for a given taxable year are due and payable during the following year. This is explained in the 2010 Schedule ICR IL-1040 Instructions on page 3 under the heading "Am I eligible for a property tax credit?" The answer reads:

You may figure a credit for the Illinois property taxes you paid in 2010 on your principal residence (not a vacation home or rental property) for the time you owned and lived at the property during 2009, if that residence was in Illinois. Nonresidents of Illinois may not take this credit.

There are four requirements for any taxpayer to receive an Illinois property tax credit on their 2010 IL-1040:

- 1) Taxpayer's principal residence during 2009 was in Illinois; and
- 2) Taxpayer owned the principal residence; and
- 3) Taxpayer's tax bill included property used for the principal resident, yard, garage or other structure used for personal purposes; and
- 4) Taxpayer's property tax billed in 2010 has been paid.

Your letter indicates that all four requirements have been met. You state that while on military active duty you moved to Illinois in 2006 when you began paying property taxes on the home you own. It appears from your letter that your principal residence is in Illinois and has been since 2006. As a result, the denial of your property tax credit was improper. I am sending a copy of this letter to Pam XXXXX in our Individual Processing Division so she will know that your property tax credit should be reinstated.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Associate Counsel -- Income Tax