

General Information Letter: No credit is allowed for property taxes deferred, rather than paid during the taxable year, under the Senior Citizens Real Estate Tax Deferral Program.

October 20, 2011

Dear:

This is in response to your letter dated June 2, 2011 in which you state the following:

This letter is to inquire regarding the applicability of the property tax credit on form IL-1040 if a taxpayer participates in the Senior Citizens Real Estate Tax Deferral Program.

The Senior Citizens Real Estate Tax Deferral Program allows a taxpayer to defer all or part of their property tax payments on their principal residence. The State of Illinois pays the tax bill, essentially setting up a loan with the taxpayer as a 6 percent simple interest rate is charged on the deferred amounts and a lien is filed on the property. The deferred amounts must be repaid within one year of the taxpayer's death or 90 days after the property is sold, transferred, or otherwise no longer qualifies for the program.

Since the State of Illinois is paying the property tax on behalf of the taxpayer, the property tax is considered paid and will show as paid when due. Per our discussion with COUNTY Treasurer's Office, they have advised that the deferred payment is allowed as a property tax credit on the IL-1040 in the year the deferral occurs because it is considered paid and is no different than the taxpayer taking out a loan to pay the taxes.

However, per two phone calls with IDOR we have been told the taxpayer cannot take the credit since the taxpayer did not pay it directly.

Please advise in writing to us as to the correct way to apply the property tax credit if a taxpayer participates in the Senior Citizens Real Estate Tax Deferral Program. We have also enclosed a brochure that includes some of the details of the program.

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.

The Illinois property tax credit is codified in Section 208 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) and states in its entirety:

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. In the case of multi-unit or multi-use structures and farm dwellings, the taxes on the taxpayer's principal residence shall be that portion of the total taxes which is attributable to such principal

residence.

Further guidance is provided in department rules found at 86 Il.Admin.Code 100.2180. For example, subsection (b) provides three requirements in order to qualify for the property tax credit:

- b) A taxpayer will qualify for the property tax credit if:
- 1) the taxpayer's principal residence during the year preceding the tax year at issue was in Illinois, and
  - 2) the taxpayer owned the residence, and
  - 3) the property tax billed in the tax year at issue has been paid. This is the amount paid after factoring in any applicable exemptions.

Based on the brochure you provided regarding the Senior Citizens Real Estate Tax Deferral Program, requirements 1 and 2 will be met by program participants as the program requires the participant to "have owned and occupied the property or other qualifying property for at least the last three years."

The third requirement, however, is not met by program participants. The brochure indicates that the Illinois Department of Revenue "sends the tax bill payment to the county collector by June 1 or within 30 days of receipt of the tax bill, whichever is later." This does not comply with the specific instructions of the statute which clearly states "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."

The statute did not intend for taxpayers to receive a credit without actually paying their property taxes. According to the brochure, there is no real deadline for repaying the "deferred amounts" other than "[d]eferred amounts must be repaid within one year of the taxpayer's death or 90 days after the property is sold, transferred, or otherwise no longer qualifies for this program." Participants in this type of a program could claim property tax credits for decades without ever paying their property taxes due to the programs unlimited requests for deferrals that need not be paid back until after taxpayers' death. The statute specifically requires taxpayers themselves to pay the property taxes in order to receive a credit to prevent such a scenario as the one described above.

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