

General Information Letter: Amounts spent to purchase books and other items that are not consumed during the year do not qualify for the education expense credit.

July 10, 2012

Dear:

Your letter dated January 30, 2012 has been forwarded to me and states as follows:

I received a Taxpayer Notification Response letter dated January 4, 2012 stating that the education expenses that I listed in my IL-1040 form were not allowed. The letter states that “to qualify, expenses must be tuition, book rental, or lab fees for a student who is the equivalent of kindergarten through twelfth grade at a home school.” I believe that my expenses (book fees, lab fees, and tuition) for my home schooled children did follow the guidelines in Publication 119 and thus the Education Credit.

I have enclosed a copy of my return along with a copy of Publication 119 for your convenience. I have requested a detailed explanation twice from a Department of Revenue representative but have received the same generic response twice. I am requesting a GIL informing us what exactly does not qualify as a credit for home school expenses.

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.revenue.state.il.us/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 legal description of the Education Expense Credit can be found in Section 201(m) of the Illinois Income Tax Act (“IITA”; 35 ILCS 5/101 et seq.). The statute states:

(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 that 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.

Qualified education expenses are further defined in the Illinois Administrative Code, specifically 100 Il.Admin.Code 100.2165(b)(4) which provides:

4) *“Qualified education expenses” shall mean amounts incurred on behalf of a qualifying pupil in excess of \$250 for tuition, book fees, and lab fees at the school in which the qualifying pupil is enrolled during the regular school year (IITA Section 201(m)).* Amounts incurred for tuition, book fees, and lab fees by a family that is the custodian of more than one qualifying pupil may aggregate all tuition, book fees and lab fees incurred by the family in arriving at qualified education expenses eligible for the credit.

A) Tuition ...

B) **Book fees are amounts paid for the use of books** that are essential to a qualifying pupil's participation in the education program of the school. A book is essential when the school or an instructor of the school requires its use by the qualifying pupil in order to participate in and complete a course of the education program.

C) Lab fees are amounts paid for the use of supplies, equipment, materials or instruments that are essential to a qualifying pupil's participation in a lab course of the school's education program. Supplies, equipment, materials or instruments are essential when the school or an instructor of the school requires their use by the qualifying pupil in order to participate in and complete a lab course of the education program. Lab courses include those courses that, in addition to classroom instruction by a teacher, provide an environment of organized activity involving observation, experimentation or practice in a course of study. Such courses of study include those courses with a scientific, musical, artistic, technical or language skill content. **Lab fees may be in the nature of a rental fee for supplies, equipment, materials or instruments that are used in the lab course. Fees incurred for the purchase of supplies, equipment, materials, or instruments used in a lab course and which are substantially consumed by the assignments and activities of the lab are also considered qualifying lab fees.**

Any amount paid for the purchase of items that would be considered qualified education expenses **but for the fact that the items are not substantially consumed** during the school year and will remain the tangible personal property of a qualifying pupil or a custodian at the conclusion of the school year **shall not be considered qualified education expenses**. For purposes of this Section, an item is substantially consumed when, during the school year, the item is used to such an extent that its fair market value has been reduced to a de minimis amount.

Bold emphasis added. The language provided in the Administrative Code makes the distinction between “renting” books and lab equipment (the cost would be a qualified educational expense) and “purchasing” books and lab equipment (the cost would not be a qualified educational expense). This is because books are not substantially consumed during the school year making it unnecessary to “purchase” the book whereas workbooks that require daily writing in them are substantially consumed during the school year making it necessary to purchase the workbook. Thus, the key as to whether a “purchased” item is considered a qualified education expense depends on whether or not the items are substantially consumed during the school year.

This analysis is consistent with the description of “what are qualified education expenses for home schooled students?” in Publication 119, a publication you refer to in your letter. Page 3 of Publication 119 states:

Specifically, qualified education expenses for home schooled children include the amount of

...

- **fees for the purchase of student’s workbooks or teacher’s grade books** that are significantly used up during the activities of the class. These expenses qualify even if they were paid to an out-of-state company.
- **book rental fees** paid for the rental of books that were required as part of the student’s education program.
- **curriculum rental fees** paid for the rental of educational items such as lectures or class lessons on DVD or tape
- **lab fees** paid for the use of supplies, equipment, material, or instruments that were required as part of a lab course in the student’s education program.

...

- **shipping charges** paid to receive a qualified item.
- **sales or use taxes** paid when purchasing a qualified item.

....

Education expenses that do not qualify for an education expense credit include the amount of

- **expenses paid to purchase** items that are not significantly used up during the student’s participation in the class (e.g., non-consumable textbooks, flash cards, wall maps, calculators, etc.).
- **expenses paid to purchase** an item that will remain the personal property of the student, parent, or legal guardian at the end of the school year (e.g., payments made toward the purchase of a band instrument or athletic equipment).

The majority of your receipts show “purchases” of books that are not student workbooks or teacher’s grade books as well as maps, DVDs and educational games. These are not qualified expenses for

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purposes of the Education Expense Credit. The remaining receipts likewise cannot be classified as "qualified education expenses" because the items do not appear to be the kind that can be consumed during the school year. Should you like to resubmit receipts for items along with an explanation as to why such items qualify as education expenses (how they are significantly used up during the activities of the class) we will review any additional information for another determination. However, based on what we have you are not entitled to an Education Expense Credit.

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