

General Information Letter: Individual who moved from Illinois in 2009 and established residence in another state, but did not sell his Illinois house, could claim the property tax credit for the portion of taxes paid on the house in 2010 allocable to the period in 2009 during which the house was his principal residence.

July 24, 2012

Dear:

This is in response to your letter dated July 12, 2012 regarding the Illinois property tax credit. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

Our client, Mr. Z, has requested that COMPANY represent him on obtaining a private letter ruling with concern to his 2010 Form IL-1040, Individual Income Tax Return. We have previously submitted a Power of Attorney Form IL-2848 on February 16, 2012 with concern to this matter. We are requesting a ruling for the issues and transactions herein described as it applies to the period of 2010.

Prior to the submission of this private letter ruling request, we have no knowledge of an audit or litigation that is pending with the Department of Revenue concerning our issue at hand.

In accordance with the Illinois Administrative Code 1200.110, we affirm that there is neither an audit ongoing nor litigation pending with the Illinois Department of Revenue. To the best of our knowledge and the knowledge of the taxpayer, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor, or has the taxpayer or any representatives previously submitted the same or a similar issue to the department but withdrew it before a letter ruling was issued.

In the event that the State issues a ruling that will be published or otherwise made public, we request that the State remove or modify any identifying characteristic of the facts about the taxpayer or any of the other parties mentioned in our request.

Individual Background:

Mr. Z was denied the Illinois property tax credit for 2010. A letter from the Department of Revenue dated May X, 2012 issued the final denial for the property tax credit after several responses and requests. This denial was based on not meeting the criteria set forth in the Illinois Department of Revenue Regulations Title 86 Part 100 Section 100.2180.

Mr. Z for the period of concern was a part-year resident and his principal residence was Illinois from January 1st to October 1st of 2009 and from October 1st, 2009 until October 1st of 2010 his residency was in STATE due to his relocation for a new job. However, he did maintain ownership of the Illinois residence for the remainder of the year.

Illinois Activity and Facts:

The State of Illinois Schedule ICR IL-1040 Instructions for the year 2010 states that an individual “may figure a credit for the Illinois property taxes [they] paid in 2010 on [their] principal residence for the time [they] owned and lived at the property during 2009.”

Illinois Department of Revenue Regulations Title 86 Part 100 Section 100.2180 Credits for Residential Real Property Taxes (IITA 208)

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.

Ruling Requested:

Mr. Z respectfully requests that the State of Illinois provide a ruling allowing the Illinois property tax credit on Mr. Z’s 2010 IL-1040 tax return.

Discussion:

Applying the 2010 ICR IL-1040 instructions we provide that Mr. Z should be granted the property tax credit because he was a resident of Illinois from January 1st, 2009 until October 1st, 2009. As such his principle residence was Illinois for nine months of the year, he owned the property during this time and for the remainder of the year, and his property taxes were paid during this time. Also, nowhere in the instructions does it disallow a part-time resident to utilize the credit.

It is Mr. Z’s position that based on his physical presence and ownership he should be allowed to take the credit on his 2010 IL-1040 Form. Through our discussion with the Department we were informed that an automated system determines the acceptance or denial of the credit based on January 1st. We were encouraged by individuals in the Department of Revenue to file a private letter ruling because of this and our specific facts and circumstances.

Following the qualifications of Section 100.2180 subsection B, we contend Mr. Z meets the qualifications for the property tax credit because as previously stated:

1. The principal residence for the period of January 1st 2009 to October 1st, 2009 is located at COURT, CITY, IL ZIPCODE.
2. Mr. Z owned the property at the stated location
3. And Mr. Z has paid the property tax for the property

Our client resided in the state for nine months, owned the property the entire year and paid property taxes. From the criteria listed above we contend that Mr. Z should qualify for the credit and that there are no statements to disregard the tax credit to a part-time resident, especially when he was a resident for the majority of the year and continued to own the property the

remainder of the year.

We further believe that granting him the credit will comport with the spirit and intent of the rule. This is to give a property tax credit to help offset the cost of property taxes to Illinois residents who own and pay property tax on their principal residence. In accordance with the spirit and intent of the rule Mr. Z's principal residence was Illinois for a majority of the year, he continued to own the home the remainder of the year and did pay a full year of property tax. Thus granting him the property tax credit would comply with the intent and spirit of the rule, which is to help Illinois residents offset the cost of property taxes.

The main issue at dispute is should a part year resident be allowed to take the credit, based on Mr. Z's specific circumstance and facts mentioned above, we believe that answer is yes.

Upon interpretation of subsection C of Section 100.2180, if a full credit will not be granted we request a partial credit be granted.

C) The credit may be based on the entire property tax bill if:

1. The taxpayer lived in the same residence during all of the year preceding the tax year at issue, and
2. The tax bill included property used only for the taxpayer's personal residence, yard, garage, or other structure used for personal purposes. If the property tax bill included not only taxpayer's personal residence, but also business, rental, or farm property, the credit may be calculated only on that portion of the property tax bill that is for the personal residence. The credit may not be taken for a vacation home.
3. Credit may not be taken for mobile home privilege tax.

In this section it states the entire bill can be used for calculating the credit thus indicating that a portion of the bill may also be used to calculate the credit and as such a partial credit may be granted. In subsection C part 2 if an area of a principal residence has business, rental or farm use the credit shall be calculated to exclude those portions. The same concept can be applied for Mr. Z and the nine months he resided in his Illinois home for 2009 and continued to own the property.

As such we request, if the entire amount will not be allowed, a portion of the credit be granted based on nine months even though he owned the house for the entire year.

In summary we contend that Mr. Z should be allowed the property tax credit because he meets the qualifications set forth in the 2010 ICR IL-1040 instructions and also in the Illinois Department of Regulations Titled 86 Part 100 Section 100.2180. We further assert that he should be granted the property tax credit because his facts and circumstances comport with the spirit and intent of the rule. If a full property tax credit will not be allowed, we believe from interpretation of Section 100.2180 Subsection C a pro rata credit for the nine months Mr. Z resided in Illinois should be calculated and applied to Mr. Z's 2010 IL-1040.

RULING

Section 208 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/208) states as follows:

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.

Department Regulations Section 100.2180 informs that property taxes in Illinois are actually paid in the year subsequent to the year in which the tax is assessed. For example, property tax assessed in 2009 is paid in 2010.

In order to qualify for the credit under IITA Section 208, it is not necessary that the taxpayer is a resident of Illinois at the time the taxes are actually paid. It is necessary, however, that the tax is accrued with respect to property in Illinois used as the taxpayer's principal residence. Furthermore, Illinois law provides for property tax to be prorated for credit purposes where only a portion of a structure is used as the taxpayer's principal residence, or where the structure is used as the taxpayer's principal residence for only a portion of the year in which the tax accrued. See Department of Revenue Publication 108, Illinois Property Tax Credit (January 2011).

In this case, you have indicated that the taxpayer maintained a principal residence in Illinois from January 1, 2009 until October 1, 2009. The taxpayer continued to own the property throughout all of 2009. The taxpayer paid the property tax with respect to the Illinois principal residence in 2010. Under these facts, the taxpayer is entitled to a property tax credit in 2010 for property tax that accrued in 2009 with respect to that portion of the year in which the property was used as the taxpayer's principal residence. Therefore, the taxpayer may calculate the credit with respect to 9/12ths of the property tax paid in 2010. A copy of this letter will be forwarded to the proper processing division within the Department, with instructions to allow the taxpayer a Section 208 credit calculated in the manner set forth herein and to adjust the taxpayer's account accordingly.

As stated above, this is a GIL. A GIL 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 have further questions regarding this GIL, please call (217) 782-7055.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)