

General Information Letter: Spouses filing joint returns, but who maintain separate Illinois residences, may each claim a credit for property taxes paid on his or her own residence.

October 26, 2010

Dear:

Your letter dated September 13, 2010 directed to Mr. Brian Hamer has been referred to me for a response. Your request is as follows:

This is a formal request for a letter ruling on Code Section 100.2180 Credit for Residential Property Taxes (see enclosed). The reasons for this request are as follows:

1. The code states that every individual taxpayer shall be entitled to a tax credit equal to 5% of real property taxes paid on the principal residence of the taxpayer.
2. In no place does this code section limit the principal residence to one per couple.
3. The code states that the residence must be in IL, must be owned by the taxpayer and he/she must have paid the real estate taxes.
4. Prior to 2009, the IL 1040 did not limit this credit to one home; with the inclusion of the PIN number on Form ICR – with only one space for the home and an additional space for a PIN number for adjoining land, there was a reading of the code to limit this credit.
5. There are not a lot, but probably more than a small number of either married couples or separated but filing jointly couples, whose spouses each own a principal residence. Each taxpayer owns the property in IL and pays the real estate taxes for this property. This may include couples who work in different locations in IL and are forced to live/own two principal residences, couples in second marriages who each own a residence and separated couples each with their own residence.
6. Currently I am aware of at least one audit in this situation for the tax years 2007-9 where one of the two principal residence real estate taxes claimed for this credit was disallowed. Since the tax form only allows for one address, the property at this address was chosen.
7. Would it be possible for married or separated taxpayers with two residences to file separately in IL and then claim the two real estate credits? My clients in this situations file jointly for the IRS – could they file separately in IL?

Thanks for your prompt review of this Code section and reply to me at the above address.

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 Income Tax Act (“IITA”; 35 ILCS 5/101 et seq.) Section 208 provides a tax credit for residential real property taxes, specifically:

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.

35 ILCS 5/208.

Your letter is correct in that there are situations when married couples may have two primary residences during the tax year. The Illinois Department of Revenue (hereinafter "IDOR") addresses such situations in its Publication 108, Illinois Property Tax Credit. On page 2 of this Publication in the second paragraph under General Information it states

You must own your residence in order to take this credit. If you and your spouse each have a principal residence or if you had two principal residences during the tax year due to the sale of your home, you may claim the tax paid on both residences when figuring this credit.

For your convenience, enclosed is a copy of Publication 108. Please be advised that IDOR does not require taxpayers to file separately when claiming the property tax credit for two different residences. However, taxpayers may be asked by IDOR to provide documentation verifying that the taxpayers owned and paid property taxes on both "primary" residences during the tax year(s) at issue.

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