

Explanation of how education expense credit applies to various items used for home schooling purposes. (This is a GIL.)

July 9, 2019

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter received June 7, 2019, in which you responded to a previous General Information Letter ("GIL") issued on May 23, 2019. The nature of your request and the additional information you have provided require that we respond with a General Information Letter, which 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 found on the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

I am writing a second letter regarding the Illinois Department of Revenue Education Expense Credit for Home Schools for year 2018. I received your initial response May 28, 2019, but continue to require your assistance. I appreciate your willingness to receive phone calls regarding this matter, but prefer our correspondence be in writing. Please refer to the copied letter dated May 23, 2019 provided, if needed.

In page 4 of your letter, it is stated that annual zoo and museum memberships would not qualify for the Illinois Department of Revenue Education Expense Credit because, "they are personal property which are not significantly used up during the student's participation in the class and will remain the property of the student, parents or legal guardian at the end of the school year. Section 10-19 of the Illinois School Code, 105 ILCS 5/10-19, requires 176 days of actual pupil attendance. That leaves 189 days where the memberships are valid to be used for non-school related attendance."

According to the Illinois State Board of education's website (<https://www.isbe.net/Pages/Homeschool.aspx>) :

In a 1950 decision of the Illinois Supreme Court, People v. Levisen, the Court held that home-schooling could be considered private schooling if the teacher were competent, the required subjects were taught, and the student received an education at least equivalent to public schooling.

*Parents or guardians who permit a child to attend a home school that is up to the standard of Section 26-1, as interpreted by Levisen, **are free to decide the manner, time and materials which best suit the learning needs of their children.** Parents may determine what type of home-schooling curriculum is best for their students, what materials to use, how much homework to assign, how homework is to be assessed, and what records of the student's accomplishments should be kept.*

Testing is not required in the state of Illinois for homeschoolers. There are private testing resources if parents choose to have their children evaluated (see resources below).

Parents who choose to educate their students in the home through the high school years may determine when their student has met the graduation requirements of their private home school and is therefore entitled to receive a high school diploma.

I am free by Illinois law to determine what, when, and how to educate my children. I am not required to educate my children only 176 days a year. Illinois law grants me the freedom to educate my children 365 days a year. Therefore annual zoo and museum memberships would qualify for the Illinois Department of revenue Education Expense Credit for Home Schools. Annual memberships for online curriculum and learning resources would also qualify as tuition or lab fees. These annual memberships typically last for 365 days, not 176.

Thank you for your time and assistance, so I am able to accurately complete and file my Illinois tax returns.

RULING

The previous GIL, dated May 23, 2019, was meant to provide general information based on the information you provided in your March 11, 2019 information request and generally applicable state statutes and regulations. Given its general nature, it may not have addressed your specific situation.

In your March 11, 2019 information request you stated as follows:

I am inquiring about qualified education expenses of home schooled student for tax year 2018 prior to filing. After reading the guidelines on PUB-119 (R-02/18) and speaking with a representative at the Springfield office of the Illinois Department of Revenue, I am writing to confirm that the following are qualified education expenses for home schooled students. The following expenses are justified using the Illinois Department of Revenue Education Expense Credit General Rules and Requirements for Home Schools[...]

2. Local children's museum and local zoo membership would qualify under lab fees. My child uses our local children's museum and zoo on a regular basis as part of our lab course in the areas of science, music, and the fine arts. My child uses these facilities for "observation, experimentation, or practice" as part of the "student's education program." A family membership is required to these facilities, because my child's father and I are my child's teachers.[...]

Underline emphasis added.

The May 23, 2019 GIL addressed the fact that generally, a school year is 176 days long and therefore, an annual membership would not be substantially consumed during the typical school year. The previous GIL, however, did not address the issue of the local children's museum and zoo beyond the "substantially consumed" issue. In this GIL, we will further address whether the memberships you described would qualify for the Education Expense Credit found in Section 201(m) of the Illinois Income Tax Act ("IITA").

As cited in the March 23, 2019 GIL, Section 201(m) of the IITA states, in part, as follows:

(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 (i) \$500 for tax years ending prior to December 31, 2017, and (ii) \$750 for tax years ending on or after December 31, 2017. In no event shall a credit under this subsection reduce the taxpayer's liability under this Act to less than zero. Notwithstanding any other provision of law, for taxable years beginning on or after January 1, 2017, no taxpayer may claim a credit under this subsection (m) if the taxpayer's adjusted gross income for the taxable year exceeds (i) \$500,000, in the case of spouses filing a joint federal tax return or (ii) \$250,000, in the case of all other taxpayers. This subsection is exempt from the provisions of Section 250 of this Act.

Underlined emphasis added. According to Section 201(m) of the IITA, the Education Expense Credit is intended to apply to qualified education expenses incurred on behalf of the qualifying pupils, not parents or instructors. This position is supported by the Department's 2018 IL-1040, Schedule ICR Instructions ("Schedule ICR Instructions").

According to page 1 of the Schedule ICR Instructions, in order to claim the Education Expense Credit found in Section 201(m) of the IITA, a taxpayer "[...] must complete Section B of Schedule ICR, including the K-12 Education Expense Credit Worksheet." The Schedule ICR Instructions also include a list of education expenses that do not qualify for the credit:

Education expenses that do not qualify for this credit include

- expenses paid to a daycare, preschool, college, university, independent tutoring service, or trade school.
- expenses paid for the purchase of supplies, books, or equipment that are not significantly used up during the school year (e.g., purchasing musical instruments, costumes for a play).
- expenses paid for the use of supplies, equipment, materials, or instruments if the program does not result in a credit towards completion of the school's education program.
- expenses paid directly to a business (e.g., renting a musical instrument from a music store).
- expenses for after school care, even if paid to the school.
- expenses paid for yourself or your spouse.

In the final sentence of the second numbered paragraph in your March 11, 2019 information request, underlined above, you state that "A family membership is required to these facilities, because my child's father and I are my child's teachers." Annual family memberships, by design, allow access to multiple family members and are, therefore, an expense that is paid for more than just the qualifying pupil. In your case, you state that you and your child's father require a family membership because you are the child's teachers. If you or your child's father are granted access to the children's museum or zoo through the family membership, then they are likely disqualified to the extent that they are expenses paid for yourself, not the qualifying pupil.

In your June 5, 2019 information request, you state, "Annual memberships for online curriculum and learning resources would also qualify as tuition or lab fees. These annual memberships typically last for 365 days, not 176." Department *Publication 119, Education Expense Credit General Rules and Requirements for Home Schools*, February 2018, ("*Publication 119*") does state that "curriculum rental

fees paid for the rental of educational items such as lectures or class lessons on DVD or tape” are qualified education expenses. However, neither *Publication 119*, Section 201(m) of the IITA, the Department’s Income Tax Rules, nor the Schedule ICR Instructions directly address whether annual memberships for online curriculum and learning resources qualify as tuition or lab fees. Whether those fees qualify for the Education Expense Credit will depend on the qualifying pupil’s curriculum and the terms of the annual membership. While *Publication 119* does not directly address this issue, the guidance it provides is still helpful. Page 3 of *Publication 119* states:

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

- **tuition** paid for a student who was in the equivalent of kindergarten through twelfth grade. This includes fees paid for the child to satisfy physical education class requirements at a private facility such as a health club.
- **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, materials, or instruments that were required as part of a lab course in the student’s education program.

Lab courses include those courses, for which the student will receive credit toward graduation, that provide an environment for organized activity involving observation, experimentation, or practice, *i.e.*, science, music, art, or language.

Note → Any purchased equipment, materials, or instruments that are significantly used up by the assignments and activities of the lab are considered qualified lab fees.

- **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).**
- **mileage or travel expenses** paid to travel to school, lab activities, or field trips.
- **expenses paid for tutoring or enrichment classes that do not count toward meeting the required curriculum.**

Underlined emphasis added. As you can see, an important factor utilized by the Department to determine whether an expense is qualified is whether the educational item purchased has value after the class has ended. If a textbook is rented, it qualifies because it is returned after the class. If the

textbook is purchased, it does not qualify because it can be utilized for future classes or be sold. Likewise, if a workbook is written in and substantially used up during the class, then it cannot be utilized by a future student and has no more value. The same can be said for other educational items. If a class lesson or lecture is rented on DVD or tape and returned after the class is over, it qualifies. If the DVD is purchased outright and can be used for future classes, it is not substantially consumed during the class, has value after the class and will not qualify for the credit.

The shift to online materials does not change this analysis. Materials provided through an online membership can be analyzed in the same manner as a textbook or other educational item. If the membership provides materials that are used during the class and do not become the property of the parent or custodian, then they can be likened to a rented textbook or lecture. If the materials can be printed or otherwise saved or access is granted beyond the end of the subscription period, then the materials can be used for future classes and should be treated like a textbook or other educational item that is purchased and still has value after the class has ended. If the membership is utilized for play time or outside learning for which the student does not receive credit or is utilized by someone other than the qualifying pupil, then the subscription would likely not qualify for the credit.

The “Notes” found on page 1 of the Schedule ICR instructions remind taxpayers that they must “Keep any receipts you received from your student’s school with your income tax records. You must send us this information if we request it.” and require the taxpayer to “Attach receipts for education expenses.” Similar guidance is also included on page 3 of *Publication 119* which states:

You must also attach receipts for education expenses paid for the qualifying student(s) during the calendar year. We will not accept a cancelled check as a receipt.

The receipts must show

- the type and amount of education expenses paid for each qualifying student during the calendar year,
- the calendar year during which the education expenses were paid,
- the name and address of the business to whom the expenses were paid, and
- the name of the parent or guardian who paid.

As you can see, the onus is on the taxpayer to retain and provide supporting documentation to show that any expense they claim as a “qualified education expense” meets the requirements of Section 201(m) of the IITA and Section 100.2165 of the Department’s Income Tax Rules, 86 Ill. Adm. Code 100.2165. As described above, determining whether an expense is qualified for the education expense credit requires a fact specific analysis. If a taxpayer has documentation that the expense meets the definition of a qualified education expense the credit should be allowed.

If you feel that certain expenses related to your child’s education curriculum meet the definition of qualified education expenses, and you have documentation to support that conclusion, you are encouraged to claim them on your current tax return or file an amended tax return for prior years where the expenses occurred. If you receive a notice of deficiency related to your return, Section 908 of the IITA sets forth the administrative appeals process in respect to a notice of deficiency. Under this section, a taxpayer has 60 days (150 days if the taxpayer is outside the United States) after issuance of a notice of deficiency to file a written protest with the Department. See 86 Ill. Adm. Code 100.9000 and 86 Ill. Adm. Code 200.120. Where tax has already been assessed, the taxpayer must pay the tax due and file a claim for refund. Section 910 of the IITA sets forth protest procedures where a claim for refund

has been denied. A claimant has 60 days from the Department's denial of a claim to file a written protest with the Department.

For your reference, the statutes, rules and forms cited above may be found at: www.tax.illinois.gov

As stated above, this is a general information letter which 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 are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Michael D. Mankowski
Associate Counsel - Income Tax