

General Information Letter: Contributions to college savings plans in excess of the maximum subtraction for a taxable year may not be carried over to other years.

January 26, 2009

Dear:

This is in response to your letter dated December 10, 2008 in which you state the following:

We request a general information letter with regards to the following inquiry.

There is a deduction allowed for contributions to a “College Illinois” Prepaid Tuition Program. Up to \$10,000 or \$20,000 if married filing joint, deducted on Schedule M IL-1040, Line 10.

If a taxpayer contributes more than \$20,000 to a single plan or more than \$20,000 in aggregate to multiple plans of this same type during a single tax year; can the contribution in excess of \$20,000 be carried over as a deduction to subsequent years so that a taxpayer can contribute more than \$20,000 in a single year and still have the benefit from the deductions; or is the benefit of deductions lost on the contribution in excess of \$20,000.

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.

Under Section 203(a)(1) of the Illinois Income Tax Act (“IITA”; 35 ILCS 5/101 et seq.), the computation of an individual’s net income subject to tax begins with that individual’s adjusted gross income, as properly reported for federal income tax purposes. Various addition and subtraction modifications are then made under Section 203(a)(2).

IITA Section 203(a)(2)(Y) allows individuals to subtract:

For taxable years beginning on or after January 1, 2002 and ending on or before December 31, 2004, moneys contributed in the taxable year to a College Savings Pool account under Section 16.5 of the State Treasurer Act, except that amounts excluded from gross income under Section 529(c)(3)(C)(i) of the Internal Revenue Code shall not be considered moneys contributed under this subparagraph (Y). For taxable years beginning on or after January 1, 2005, a maximum of \$10,000 contributed in the taxable year to (i) a College Savings Pool account under Section 16.5 of the State Treasurer Act or (ii) the Illinois Prepaid Tuition Trust Fund, except that amounts excluded from gross income under Section 529(c)(3)(C)(i) of the Internal Revenue Code shall not be considered moneys contributed under this subparagraph (Y). This subparagraph (Y) is exempt from the provisions of Section 250.

The statutory language states that **a maximum of \$10,000 contributed in the taxable year** to a College Savings Pool account **or** the Illinois Prepaid Tuition Trust Fund may be subtracted by an individual (\$20,000 if married filing jointly) so long as it **excludes** amounts contributed to IRC Section

529 plans. Please note that earnings from a Section 529 plan that are distributed from the plan and, within 60 days, are rolled over into another Section 529 plan are excluded from gross income under IRC Section 529(c)(3)(C)(i). Taxpayers who contribute more than \$10,000 individually may only receive a maximum subtraction of \$10,000 for the year (\$20,000 for joint returns). The language states that the taxpayer must choose between contributing to either "(i) **a** College Savings Pool **account** ... **or** (ii) **the** Illinois Prepaid Tuition Trust Fund" for purposes of receiving the maximum benefit of this statutory subtraction modification.

You ask whether a contribution in excess of \$20,000 (on joint return) can be carried over as a deduction to subsequent years. There is no statutory provision that allows a carryover for excess amounts contributed into a College Savings Pool account or the Illinois Prepaid Tuition Trust Fund. Finally, please note that the subtraction at issue is found on Schedule M IL-1040, Line 11, not Line 10.

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
Staff Attorney -- Income Tax