IT 02-0059-GIL 12/26/2002 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter: The Illinois Income Tax Act does not require recapture of contributions made to a Bright Start plan and then withdrawn in a subsequent year.

December 26, 2002

Dear:

This is in response to your letter dated November 12, 2002 in which you state the following:

> I got your name from reading IT 02-0011-GIL and 02-0036-GIL. Under Additional information in IL 02-0036-GIL, you talk about Public Act 92-0626's exclusion from the subtraction modification for amounts excluded from gross income under Section 529(c)(3)(B) of the IRC. Does this apply only to amounts that are excluded in the same year or also to amounts that are expected to be excluded in the future?
>
> Put another way, I can see not allowing a contribution modification for amounts put into the plan and withdrawn in the same year. But if a contribution is made in one year and withdrawn in a future year, we can't be sure it will be excluded in that year.

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.

As discussed in the two General Information Letters you referenced, Section 16.5 of the State Treasurer Act, 15 ILCS 505/16.5, provides that the State Treasurer may establish and maintain a College Savings Pool in order to provide investment opportunities to persons seeking to finance the costs of higher education. The State Treasurer has titled the College Savings Pool program "Bright Start."

Under the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 *et seq*.), a taxpayer's Illinois base income is generally equal to his, her or its federal taxable income, adjusted by certain statutorily prescribed addition and subtraction modifications (See IITA §203). IITA Section 203(e)(1) defines "federal taxable income" for this purpose as the taxpayer's *"taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Cod*e."

IITA Section 203(a)(2)(Y) provides individuals a subtraction modification in the computation of base income for taxable years beginning on or after January 1, 2002 in an amount equal to all moneys contributed during the taxable year to a Bright Start program. Public Act 92-0626 created an addition modification to a taxpayer's adjusted gross income for Illinois purposes for distributions from a Section 529 plan, other than distributions from a Bright Start program, for amounts excluded from gross income under Section 529(c)(3)(B) of the IRC.

The calculation of both Illinois base income and federal taxable income are dependent upon a taxpayer's taxable year. The statutory addition and subtraction modifications are also dependent upon a taxpayer's taxable year, therefore amounts that are expected to be excluded in the future are not considered until the taxable year in which they are in fact excluded.

At this time, there are no restrictions regarding the timing of a contribution and subsequent withdrawals. Therefore, modifications are allowed for amounts contributed to a Bright Start plan even if they are withdrawn in the same year.

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,

Matthew S. Crain
Staff Attorney -- Income Tax