

General Information Letter: The amount of tax paid to Missouri that qualifies for the foreign tax credit is not reduced by the amount paid by the taxpayer for a transferable credit used against the liability.

April 11, 2005

Dear:

This is in response to our telephone conversation this morning, in which you requested a letter ruling. The nature of your request and the 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.revenue.state.il.us.

In our telephone conversation, you stated that two of your Illinois resident clients, Mr. Z and Mrs. Z, SSN XXX-XX-XXXX and XXX-XX-XXXX, are planning to purchase transferable credits that they will use against their 2004 Missouri income tax liability. You asked whether, for purposes of computing the credit allowable for taxes paid to Missouri, the Zs' Missouri income tax liability will be computed after subtracting the purchased credits.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows Illinois residents a credit for taxes paid to another state on income that is also subject to tax by Illinois. For purposes of determining the amount of tax paid to another state, 86 Ill. Admin. Code Section 100.2197(c)(2) provides:

Any credit (including a credit for taxes paid to Illinois or another state, but not including a credit that is allowed for an actual payment of tax, such as a credit for income taxes withheld, for estimated taxes paid or for an overpayment of income tax in another taxable year) that is taken into account in determining the amount of tax actually paid or payable to another state shall reduce the amount of credit to which the taxpayer is entitled.

RSMo. Section 253.550 provides for a Missouri income tax credit equal to 25% of expenses incurred in rehabilitation of certified historic structures. RSMo. Section 253.557 expressly allows the person earning the credit to transfer the credit to another taxpayer. You have stated that Missouri law provides that several other credits are also transferable, and that you do not know at this time which credits the Zs will purchase.

In Chief Counsel Advice 200126005 (May 31, 2001), the Internal Revenue Service determined that a taxpayer who purchased a transferable Colorado income tax credit and used it to offset its liability had, in effect, transferred property to the state in payment of its tax liability, and therefore was allowed an itemized deduction for income taxes paid with the credit. Although this document is not binding authority, its reasoning is applicable to the determination of whether the purchased Missouri credit reduces the amount of tax paid to Missouri or should be treated as a payment of Missouri taxes.

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Accordingly, the amount paid by the Zs to purchase transferable Missouri credits for use against their 2004 Missouri income tax shall be treated as payment of that tax for purposes of computing the credit to which the Zs are entitled under Section 601(b)(3) of the Illinois Income Tax Act. To insure that they will be allowed the proper treatment of their payment, they should attach to their 2004 return proof that the credit was purchased and of the amount paid.

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, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax