

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(6)I
Income Tax
October 15, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I120327A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the term, “qualified college tuition expenses,” as defined by section 606(t)(2)(C) of the Tax Law, includes tuition payments made on behalf of a dependent student. The student is enrolled in a special six-year [REDACTED] University program where, when completed, the student receives a professional degree. The student does not receive a Bachelor’s degree as part of this program.

We conclude that “qualified college tuition expenses,” as defined by section 606 (t)(2)(C) of the Tax Law, does not include payments for enrollment or attendance in the graduate equivalent of a program leading to a professional degree.

Facts

Petitioner is a resident of New Jersey who works in New York and files a New York nonresident personal income tax return each year. He has a dependent enrolled in [REDACTED] University’s pre-pharmacy/pharmacy program. [REDACTED] University is an institution of higher education in the State of [REDACTED], and its pharmacy program is accredited by the Accreditation Council for Pharmacy Education.

Under the special program, the student studies for two years as a pre-pharmacy undergraduate major. After two years, the student can be admitted into the four-year Doctor of Pharmacy (Pharm.D.) program. According to the university’s web site, the Doctor of Pharmacy is a professional degree, not a graduate degree. Admission into the program requires some prior college level study, but not a Bachelor’s degree. Students admitted into the Doctor of Pharmacy program can, however, have a Bachelor’s degree. Admission into the program is not automatic after two years; students not admitted can use their undergraduate credits to pursue a Bachelor’s degree at [REDACTED]. The students in the Doctor of Pharmacy program pay a special professional tuition rate which is not applicable to the two-year pre-pharmacy program. The four-year Doctor of Pharmacy program is a necessary step in the process of becoming a registered pharmacist. Petitioner’s dependent was admitted into the Doctor of Pharmacy program after completing two years in the undergraduate pre-pharmacy program.

Analysis

As a nonresident, Petitioner cannot claim the college tuition credit provided by section 606(t) of the Tax Law on his New York nonresident return. However, in his calculation of

New York tax owed, he may be able to take an itemized deduction for “allowable college tuition expenses,” as defined in section 606(t)(2) of the Tax Law. *See* Tax Law §§ 601(e) and 615(d)(4). “Allowable college tuition expenses” is defined as the amount of qualified college tuition expenses . . . paid by the taxpayer during the taxable year, limited to \$10,000 for each student. *See* Tax Law §606(t)(2)(A). “ ‘Qualified college tuition expenses’ shall mean the tuition required for the enrollment or attendance of an eligible student at an institution of higher education. Provided, however, tuition payments made pursuant to the receipt of any scholarships or financial aid, or tuition required for enrollment or attendance in a course of study leading to the granting of a post baccalaureate or other graduate degree, shall be excluded from the definition of ‘qualified college tuition expenses.’ ” Tax Law §606(t)(2)(C).

Under New York case law, tax deductions are a matter of legislative grace, and a taxpayer must be able to show that he or she comes within the provisions of an applicable statute or regulation. *See Matter of Grace v. New York State Tax Commission*, 37 N.Y.2d 193 (1975). The Tax Law specifically excludes tuition payments required for a course of study leading to the “granting of a post baccalaureate or other graduate degree.” It makes no mention of professional programs that combine aspects of both undergraduate and graduate study. Although Petitioner’s dependent did not need a Bachelor’s degree to be enrolled in the Doctor of Pharmacy program, he or she could have applied after earning one, and this makes the Doctor of Pharmacy program analogous to the “post baccalaureate or graduate” category. For this reason, a deduction cannot be claimed for that aspect of the program’s tuition expenses. However, tuition payments for the undergraduate-level study years of the program prior to formal entry into the Doctor of Pharmacy program would qualify as “qualified college tuition expenses” under section 606(t)(2)(C) of the Tax Law as such undergraduate study is indistinguishable from other undergraduate-level study.

DATED: October 15, 2012

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.