New York State Nursing Home Assessment Credit

By Laura LaForgia, CPA, MST

One commonly overlooked New York state income tax credit that could provide some real money to those who need it is the nursing home assessment credit. For tax years beginning on or after Jan. 1, 2005, this credit refunds the portion of an assessment imposed by the Commissioner of Taxation and Finance on a New York nursing home, pursuant to Public Health Law section 2807-d(2)(b), that is passed through on the nursing home resident's bill. The credit is equal to up to 6% of the base-rate portion of the assessment paid by an individual during the year. A credit is not allowed, however, if the assessment is paid by a trust or other entity.

Claiming the Credit

The person who actually pays the assessment is the person who can claim the credit; this is not necessarily the nursing home resident. For example, if a daughter pays the nursing home charges for her parent, the daughter would be the one entitled to the credit. There is no dependency requirement in order to receive the deduction. If more than one individual pays the nursing home assessment for the same nursing home resident, the credit must be apportioned among them. (Because Form IT-258 asks for the name and Social Security number of the nursing home resident, tax advisors with clients in such a case may receive an inquiry from New York state.)

What happens if the nursing home resident assigns long-term care benefits to the nursing home? A credit may be claimed for the amount of those insurance benefits that represent the assessment payment; however, a credit is not allowed for any part of the assessment paid directly to the nursing home by a health insurance policy with public funds (e.g., Medicaid or Medicare). In this regard, the credit applies to “private pay” patients.

To obtain this credit, one must file Form IT-258, Claim for Nursing Home Assessment Credit, which is fairly simple—in fact, both the form and the instructions fit on one side of a page. The most difficult part is filling in the required amount on line 1 (the 6% base-rate portion of the assessment). This amount is usually separately stated on the billing statements. Note that the assessment amount is not the amount of expenses paid for care.

The instructions for Form IT-258 indicate that if the billing statements show the amount of expenses instead of the amount assessed by New York state or if taxpayers and their advisors are unable to determine the proper amount, they should contact the healthcare facility to obtain the New York state assessment amount eligible for the credit. Many nursing homes automatically provide this information for the residents’ tax returns in the form of a letter or statement. Although there is no particular form used to supply this information, the statement must include the name of the facility, name of the resident, period covered by the statement, and amount of the assessment that was passed through and paid by or on behalf of the resident. Taxpayers should remember to keep records to back up a claim in the event of inquiry by the state.

A Refundable Credit

According to the 2013 form instructions, “There is a temporary rate increase, however, the NYS credit is still limited to the 6% allowed pursuant to Public Health Law section 2807-d(2)(b).” Because this is a refundable credit, if the amount of the credit allowed exceeds the taxpayer's tax for a certain year, the excess is treated as an overpayment of tax credited or refunded to the taxpayer. Not many other New York credits are refundable in this way. For example, the popular long-term care insurance credit is a nonrefundable credit for long-term care insurance premiums paid; it can carry forward in a year that it is not utilized, but it cannot be refunded.

How does this credit interplay with a taxpayer's federal tax return? Although a complete discussion of federal treatment of state income tax credits is beyond the scope of this article, it is important to note that there has been no published guidance from the IRS or the Treasury department addressing the treatment of such credits. Over the years, informal advisories have consistently applied a tax benefit approach, most recently Chief Counsel Advisory 200842002, which addresses the federal tax treatment of the refundable Qualified Empire Zone Enterprise (QEZE) credit for real property taxes.

Generally speaking, the recipient of a nonrefundable state income tax credit that can be applied to current or future state tax liability is treated as having a reduced state tax liability. In other words, the recipient is not considered as receiving a payment from the government that would be considered gross income under IRC section 61. When a state credit is refundable, the portion of the state credit that exceeds the state tax liability and is refunded is subject to federal taxation as gross income under IRC section 61, unless some exclusion applies. (See an informative letter on the subject of federal tax treatment of state tax credits from Christopher F. Kane, Chief, Branch 3, Office of Associate Chief Counsel to The Honorable Richard L. Hanna, U.S. House of Representatives, Mar. 29, 2013.) In applying these principles, the refundable portion of the nursing home assessment credit would be federal gross income in the following year for cash-basis taxpayers.

Many people do not file a New York state individual tax return if there is no income-filing obligation; however, if they are entitled to the nursing home credit, they should file, regardless of income, in order to obtain the refund of the assessment—otherwise, they are throwing their money away. If taxpayers filed prior-year returns and mistakenly did not take this credit, they still have time to amend to claim the credit. Taxpayers generally have three years from the due date of the original return to amend.

Practical Considerations

As stated above, this credit is often overlooked. A bill introduced in 2013 would have required the Commissioner of Taxation and Finance to notify eligible taxpayers of the credit; unfortunately, the bill was killed early this year. Despite this, nursing homes are becoming better at educating people about this credit. Tax advisors should follow suit by asking clients if they have loved ones in a nursing home. If so, inquire as to who is paying for the expense. With a little planning, tax advisors can help their clients take advantage of this refundable credit.

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(photo can be found: http://www.nysscpa.org/taxstringer/2013/june/laforgia.htm)