

---

---

## Legal Information

[SEARCH](#)

---

# 2000 Practitioners' Questions and Answers

## Income Tax

**Note:** The answers by the Department of Revenue to the questions below are not to be relied upon by taxpayers in lieu of a Private Letter Ruling and are not the kind of written information upon which a taxpayer may rely to request an abatement under the Taxpayer Bill of Rights. Where a conflict appears to exist between these answers and a form, instruction, regulation or bulletin issued by the Department, taxpayers are advised to follow the form, instruction, regulation or bulletin, contact the Department's Business Hotline at (217) 524-4772, or seek a Private Letter Ruling.

1. Internal Revenue Code §685 provides for the formation of "Qualified Funeral Trusts" ("QFT"). Typically, a funeral director will create such a trust. As individuals invest funds to prepay their funeral expenses, the funeral director will set up an account for each of them. An election is then made for those accounts that are to be included in the QFT. The income from these trusts is reported for Illinois income tax purposes on Form IL-1041. GIL IT 98-0048 appears to be the only document produced by the Illinois Department of Revenue discussing the Illinois taxation of Qualified Funeral Trusts. However, the GIL did not address all the Illinois income tax issues concerning Qualified Funeral Trusts. 225 ILCS 45/4a(c) states in part:

"Because it is not known at the time of deposit or at the time that income is earned on the trust account to whom the principal and the accumulated earnings will be distributed for the purpose of determining the Illinois income tax due on these funds, the principal and accrued earnings or losses related to each individual account be held in suspense until the final determination is made as to whom the account shall be paid." (Emphasis added.)

The first issue is when the taxes are to be reported and remitted to Illinois. The above statute would indicate that for Illinois income tax purposes the tax on the accumulated earnings would be due upon the death of the person for whom the QFT was established. The second issue is whether all the accounts under a QFT must be aggregated for reporting and remitting of tax, or if each account may file separately. The statute cited above refers to "...each individual account...". Also, if our interpretation is correct and the taxes are reported upon the death of each individual, the accounts would file Illinois returns at different times. If the accounts file individually, and not aggregately, then we would assume that the \$1,000 exemption would be available for each account.

Response:

Illinois income tax will be due on any amount of income from a trust established under the Illinois Funeral or Burial Funds Act that is included in federal taxable income (adjusted gross income in the case of an individual) in the year payment from an account is made. No Illinois income tax will be due on any other amount of income from such trusts. The person responsible for reporting and paying Illinois income tax is the person responsible for reporting and paying federal income tax.

Analysis: Under IITA Section 203, the computation of a taxpayer's net income subject to Illinois income tax for a tax year begins with the taxpayer's federal taxable income (adjusted gross income in the case of an individual). That section provides for specific addition and subtraction modifications to be made to the federal income to arrive at base income. IITA Section 203(h) states that:

Except as expressly provided by this Section there shall be no modifications or limitations on the amounts of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year,

whether in respect of property values as of August 1, 1969 or otherwise.

IITA Subsections 203(a)(2)(N), (b)(2)(J), (c)(2)(K), and (d)(2)(G) expressly provide that a subtraction modification is allowed for any amount included in federal taxable income or adjusted gross income which is exempt from Illinois income taxation under Illinois statute. Pursuant to this provision, any amount of income of a taxpayer that is deferred under 225 ILCS 45/4a(c) may be subtracted by the taxpayer.

225 ILCS 45/4a(c) provides only for deferral of income until the year of payment from an account, implying that income subtracted in one year should be added back in the year of payment. However, there is no provision in the Illinois Income Tax Act that allows or requires a taxpayer to add back in one year any income deferred under 225 ILCS 45/4a(c) in another year. Pursuant to IITA Section 203(h), no such addition modification can be made.

Accordingly, income from a trust established under the Illinois Funeral or Burial Funds Act will be subject to Illinois income tax only to the extent included in federal taxable income or adjusted gross income of a taxpayer in the year a payment is made from the relevant individual account. This rule applies whether or not the trust is also a Qualified Funeral Trust under IRC Section 685. 86 Ill. Adm. Code Section 100.2470 will be amended to include this rule.

The second part of the question appears to ask whether each account must file returns and pay taxes as a separate trust. The answer is determined by the federal income tax treatment of the trust and the accounts. If, for federal income tax purposes, each account is a separate trust required to file returns and pay taxes, each will be a separate trust required to file returns and pay taxes for Illinois income tax purposes. If, on the other hand, all accounts are treated as a single trust for federal income tax

purposes, that trust is required to file returns and pay taxes for Illinois income tax purposes.

**Got Questions  
get answers here!** 

## Quick Links

[Home](#)

[Forms](#)

[Publications](#)

[Laws / Regs / Rulings](#)

[Tax Rate Finder](#)

## Information For

[Businesses](#)

[Individuals](#)

[Local Governments](#)

[Property Tax](#)

[Non-Profit Orgs.](#)

[Charity Gaming](#)

[Motor Fuel](#)

[Tax Professionals](#)

## About IDOR

[What we do](#)

[Contact Us](#)

[Press Releases](#)

[Tax Stats](#)

[Tax Research](#)

[Site Map](#)

2. INCOME TAX - GRAMM LEACH BLILEY EFFECT ON FINANCIAL ORGANIZATION DEFINITION. Under Section 1501(a)(8)(A), a financial organization includes "any person which is owned by a bank or bank holding company" and "which a bank holding company may acquire and hold an interest in, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956...." While the BHCA of 1956 generally did not permit this, the Gramm Leach Bliley Act now permits a bank holding company to own a full-fledged broker-dealer. Does the Department of Revenue recognize an expansion of the definition of "financial organization" as a result?

Response:

Any entity engaged in any business, including that of a broker-dealer, that is owned by a bank or bank holding company during a tax year in which the Bank Holding Company Act of 1956 permits such ownership is a financial organization.

Analysis: This is the clearest reading of the statute, and is the interpretation the Department has followed in its forthcoming proposed regulations defining "financial organization".

Copyright © 2010

[AMBER Alert](#) | [Missing Kids](#) | [Privacy Policy](#)  
| [Kids Privacy](#) | [Web Accessibility](#) | [Webmaster](#)