

General Information Letter: Residency determinations are not proper subjects for letter rulings.

September 11, 2009

Dear:

This is in response to your letter dated July 23, 2009. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at www.Iltax.com.

Your letter states:

We recently called an Illinois tax auditor on a review of an employee of the US Dept of State overseas. He suggested that I contact you to get a legal clarification. We are questioning the taxable income claim for overseas taxpayers that spend no time in Illinois and have no residence in the state.

The taxpayer happened to last live in IL before joining the foreign service.

I have enclosed an article written by a tax professional that reviews all of the taxation situations for each state. I am writing questioning (see attached) "However, it appears that under some circumstances domiciliaries absent from the state throughout the year may not be subject to tax, so they should check with the IL Dept of Revenue in advance." Could you clarify this statement, if it is true and under what conditions. Many other states do not tax overseas income or allow foreign earned income exclusions for US Government employees (US Govt does not allow exclusion to its employees overseas).

RULING

For Illinois income tax purposes, a resident is generally taxed on all income regardless of source, while a nonresident is taxed only on income allocated to Illinois under the provisions of Article 3 of the Illinois Income Tax Act (IITA). See IITA Section 301 (35 ILCS 5/301).

Department Regulations § 100.3020(a)(1) defines the term "resident" to include an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year.

Department Regulations § 100.3020(b) next states:

Individuals. The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category, all individuals, who, although domiciled in Illinois, are outside Illinois for other than temporary or transitory purposes, and, hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than a temporary or transitory purpose, he remains a resident even though temporarily absent from Illinois. If, however, he leaves Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in

Illinois, he remains a resident unless he is outside Illinois for other than temporary or transitory purposes.

As the regulation indicates, an individual domiciled in Illinois may be considered a nonresident for tax purposes if the individual is outside Illinois for other than temporary or transitory purposes.

As stated above, this is a GIL. A GIL 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 have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)