

General Information Letter: An individual who routinely spends part of every tax year in Illinois and part in Iowa is not a part-year resident.

July 23, 2003

Dear:

This is in response to your letter (with attachments) which was received by this office on July 15, 2003, in which you request a legal opinion. Department of Revenue (“**Department**”) regulations require that the Department issue only two types of letter rulings, Private Letter Rulings (“**PLRs**”) and General Information Letters (“**GILs**”). **PLRs** are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A **PLR** is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the **PLR** are correct and complete. **GILs** do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, *2 Ill. Adm. Code Part 1200* regarding rulings and other information issued by the Department, can be accessed at the Department’s website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your correspondence and the information provided require that we respond only with a **GIL**.

In your letter you state in part as follows:

I have lived in both the state of Illinois and the state of Iowa each year for the past 3 years. Your Schedule NR says, “Were you a resident of Illinois at any time during the tax year?” – the answer is yes. Your form NR then says if “yes,” you were a part-year resident of Illinois. Thus by your own form NR definition I am a part-year resident of Illinois. I own a property at ADDRESS, Illinois. I pay property taxes every year, however, if I lived in Iowa for more than half the year or was living in Iowa on 12/31/ of the tax year, I did not claim the 5% property tax deduction. In 2002, I lived in Illinois from 4/2002 until 12/31/2002 (well over half the year) and feel that I am eligible for the amount of ... (calculation)... \$246.00 and the 5% deduction is \$12.00.

Please consider the applicable laws and decide if I should have been allowed this \$12.00 deduction.

In response to your inquiries, we reference the ITR-76 notice we sent you dated July 10, 2003 which is attached to your letter. On page three thereof, the notice advises you that the \$12 credit for real property taxes paid which you claimed on your 2002 personal income tax return was denied because you were not a resident of Illinois “in the prior tax year.”

Section 208 of the Illinois Income Tax Act (IITA), 35 ILCS 5/2-208 (2003) provides the following credit against personal income tax:

Beginning with tax years ending on or after December 31, 1991, every individual taxpayer shall be entitled to a tax credit equal to 5% of real property taxes paid by such taxpayer during the taxable year on the principal residence of the taxpayer. In the case

of multi-unit or multi-use structures and farm dwellings, the taxes on the taxpayer's principal residence shall be that portion of the total taxes which is attributable to such principal residence.

Under the system of property taxation existing in Illinois, property taxes for a given taxable year are due and payable during the following year. Thus, property taxes for the year 2002, the year during which the Illinois property served as your principal residence, were due and payable in 2003. A person who buys the property in 2003 may be required to pay some or all of the 2002 tax, but the tax is legally imposed on the seller. The buyer is merely paying the tax on behalf of the seller. Accordingly, when a person who claims to be a part-year resident also claims the credit, we deny the credit because a person moving into Illinois during the year is not the property tax payer. This is the rationale for the statement on page 3 of the ITR-76 Notice where it reads "You may be eligible for this credit on your next year's return." Claim the credit on your 2003 return when you file it in 2004 and it will doubtless be allowed.

Your response to our Notice indicates there is a more fundamental problem with your Illinois filing situation. Your correspondence indicates that you have been filing as a part-year Illinois resident for multiple years. Legally, filing under such status is not permissible. IITA Section 1501(a) sets forth the following definitions:

(17) **Part-year resident.** The term "part-year resident" means a person who became a resident during the taxable year or ceased to be a resident during the taxable year. Under Section 1501(a)(20)(A)(ii) residence commences with presence in this State for other than a temporary or transitory purpose and ceases with absence from this State for other than a temporary or transitory purpose. Under 1501 (a)(20)(A)(ii) residence commences with the establishment of domicile in this State and ceases with the establishment of domicile in another state. (emphasis added).

(20) **Resident.** The term "resident" means:

(A) an individual (I) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year...

Under IITA Section 1501(a)(17) above, it is legally impossible to be a "part-year resident" for more than one particular year. A person may be a part-year resident the year (s)he moves to Illinois or the year (s)he moves away from Illinois. Other than that one year of transition, the law requires the person to claim a legal residence based on his or her "domicile". Illinois regulation Section 100.3020(d) defines "domicile" thusly:

Domicile. Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself and his family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently

removing therefrom. An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere. Thus, if an individual, who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he has the definite intention of returning to Illinois. On the other hand, an individual, domiciled in California, who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile:

- 1) by locating elsewhere with the intention of establishing the new location as his domicile, and
- 2) by abandoning any intention of returning to Illinois. (emphasis added).

Your retention of your Illinois property, the use of it as your principal residence of it for purposes of claiming the real property tax credit and the fact that, following each sojourn to Iowa, you return to Illinois leads this office to believe that your true domicile is in Illinois and that you are thus an Illinois resident and have been for all the years mentioned. Consequently, we advise you to review your returns for the years mentioned and consider re-filing accordingly. This will probably enable you to claim the real property tax credit for more than just 2002. Additionally, as a resident, you may claim a foreign tax credit for taxes paid to Iowa on the same income taxed in Illinois. Consult Schedule CR for these purposes.

Feel free to contact this office if you have any questions about the foregoing or any other Illinois Income Tax filing requirements.

As stated above, this is a **GIL** 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 wish to obtain a **PLR** which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of *2 Ill. Adm. Code Part 1200*.

Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax