

General Information Letter: Residency determinations are very fact-specific and are not appropriate subjects for letter rulings.

April 22, 2009

Dear:

This is in response to your letter dated March 22, 2009 requesting a determination as to your residency status for Illinois income tax purposes. The nature of your request requires 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 as follows:

I'm writing to have your office determine my residency status for 2006. I need this information to help in a tax dispute with the state of Ohio. After doing considerable research, I determined that I did not meet the requirements for Illinois residency. Please consider the following factors in your decision.

I used the following address for mail purposes only: LANE, CITY, Illinois. I never lived at this address, but had a friend forward my mail to me. I did not spend more than two weeks in Illinois in 2006. This can be confirmed from my friend at the address above.

I believe I did not meet the requirements of residency in any state in 2006. I'm semi-retired and have only worked about one year in the last eight. With the exception of September through December 2006 when I worked in Ohio, I traveled full time during the rest of 2006. At the time, it did not make any sense to have my own place in any state. I've since established a residence in Florida.

I was in need of obtaining and maintaining a driver's license; therefore, I applied and received one in Illinois.

RULING

Section 1501(a)(14) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/1501(a)(14)) defines the term "nonresident" as a person who is not a resident.

Section 1501(a)(20) of the IITA defines the term "resident" to include an individual:

- (i) who is in [Illinois] for other than a temporary or transitory purpose during the taxable year; or
- (ii) who is domiciled in [Illinois] but is absent from the State for a temporary or transitory purpose during the taxable year.

Department of Revenue Regulations Section 100.3020(b) describes the purpose of the definition.

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 and 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 temporary or transitory purposes, 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.

Department of Revenue Regulations Section 100.3020(c) describes the phrase "temporary or transitory purposes" as follows:

Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may also maintain an abode in some other state.

Department of Revenue Regulations Section 100.3020(d) sets forth the meaning of the term "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 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.

As the above regulations make evident, whether or not an individual is a resident of Illinois for income tax purposes is a factually intensive inquiry that necessitates consideration of all the facts and circumstances in each particular case. Consequently, the Department does not issue rulings as to residency.

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 further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.ILtax.com.

Sincerely,

Brian L. Stocker
(Associate Counsel – Income Tax)