

General Information Letter: Response to various residency questions in survey of state laws.

September 30, 2009

Dear:

This is in response to your letter dated June 23, 2009 wherein you request responses to eight (8) specific questions. According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. Please note that GILs are not binding on the Department.

Below you will find responses to your questions:

- 1) Does your state have a residency audit program currently underway?

Response: No.

- 2) How does your state define a "resident" for personal income and/or intangible tax purposes?

Response: Section 1501(a)(20) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) defines "resident" in the following way:

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;

(B) The estate of a decedent who at his or her death was domiciled in this State;

(C) A trust created by a will of a decedent who at his death was domiciled in this State; and

(D) An irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable. For purpose of this subparagraph, a trust shall be considered irrevocable to the extent that the grantor is not treated as the owner thereof under Sections 671 through 678 of the Internal Revenue Code.

The definition is further defined in department regulations: 86 Ill. Admin. Code Section 100.3020. Enclosed please find a copy for your convenience.

- 3) What criteria does your state examine in determining domicile (for example, voting records,

location of employment, automobile registration)?

Response: "Domicile" is discussed in 86 Ill.Admin.Code Section 100.3020(d) and based on the specific language of your question we are including the language found in Section 100.3020(g) as well:

(d) 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.

...

(g) Proof of residence or nonresidence

(1) The type and amount of proof that will be required in all cases to rebut or overcome a presumption of residence or nonresidence cannot be specified by a general regulation, but will depend largely on the circumstances of each particular case. The taxpayer may submit any relevant evidence to the Department for its consideration. Such evidence may include, but is not limited to, affidavits, evidence of: voter registration, automobile or drivers license registration, filing an income tax return as a resident of another state, home ownership or rental agreements, club and/or organizational memberships and participation, telephone and/or other utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence which may assist it in determining the taxpayer's place of residence.

(2) ...

- 4) If a person has paid tax to your state as a resident, would you accept New York's reclassification of that individual as a New York resident?

Response: 86 Ill.Admin.Code 100.3020(i) specifically recognizes that a person may be a “resident” of two different states for state income tax purposes. Assuming that the taxpayer in question was a “resident” of Illinois for a given state income tax year during which (s)he was also classified as a “resident” of New York, the IITA provides a credit for the amount of tax paid to another state on income which is also subject to tax in Illinois. Because of recent statutory changes regarding the calculation of such credits, the current applicable statutory language is as follows:

- (3) Foreign tax. The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. *For taxable years ending prior to December 31, 2009*, the aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer’s base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. *For taxable years ending on or after December 31, 2009*, the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer’s base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer’s total base income subject to tax by this State for the taxable year. The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe.

IITA Section 601(b)(3) (emphasis added to show recent change).

- 5) What is your state’s statute of limitation for filing a refund claim?

Response: The statute of limitations for filing refund claims is the later of: three (3) years from the date the particular return is filed or one year from the date the tax is actually paid. IITA Section 911(a)(1).

- 6) Should a taxpayer file a claim for refund of taxes paid to your state immediately upon being selected for audit by another state or wait until the other state concludes its audit?

Response: The taxpayer will be subject to the statute of limitations for filing refund claims as explained in the preceding paragraph. If the taxpayer is aware of the audit prior to the expiration of the statute of limitations as prescribed in Section 911(a)(1) and the audit has not been completed, the taxpayer shall seek an extension by agreement as described in 86 Ill.Admin.Code 100.9410(c). The refund claim will not be dismissed if such agreement is in effect prior to the expiration of the statute of limitations. The extension by agreement will have an expiration date so that “such extended period may be successively further extended for any or all such taxable years by the obtaining of a further written consent.” 86 Ill.Admin.Code 100.9410(c). However, if the taxpayer becomes aware of the

audit by another state after the statutory limitations period described in IITA Section 911(a)(1) has expired, the refund claim will be dismissed.

7) How does your state treat stock option income received by nonresidents?

Response: For your convenience, I have enclosed a copy of our regulation that deals with stock option income received by nonresidents. 86 Ill.Admin.Code 100.3120.

8) Does your state require e-filing for personal income taxes? If so, does it apply to both residents and nonresidents?

Response: We urge both residents and nonresidents to e-file their personal income taxes although it is not yet required.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax