

General Information Letter: Residency laws explained.

October 26, 2009

Dear:

This is in response to your letter that we received on September 4, 2009 in which you state the following:

I am writing to request a determination as to my tax filing status with the state of Illinois. According to the instructions on [www.tax.illinois.gov](http://www.tax.illinois.gov), "You are an Illinois resident if you were domiciled in Illinois for the entire tax year. Your domicile is the place where you reside and the place where you intend to return after temporary absences." "If you are absent from Illinois for one year or more, we will presume you are a nonresident of Illinois."

Since 2001, I have been living in Africa, returning to Illinois for medical and family visits alone. And I intend to continue living in Nigeria for several years to come.

Although I am registered to vote in Illinois, it appears to me that Nigeria, not Illinois, is actually my domicile. I would appreciate your assistance in confirming my understanding of my nonresidence status for tax reporting purposes.

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/LegallInformation/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 and are therefore not binding on the Department.

Section 201(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) imposes a tax measured by net income "on the privilege of earning or receiving income in or as a resident of this State." According to Section 1501(20) of the IITA, the applicable definition of a "resident" is defined as

- (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.

In addition, Section 100.3020 of the Illinois Administrative Code ("IAC") discusses residency in greater detail. For example, Section 100.3020(d) focuses upon the taxpayer's "domicile" in determining residency for Illinois Income Tax purposes:

- (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. ... 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. ...

Your letter states that you return to Illinois for medical and family visits and that you are registered to

vote in Illinois. You do not mention any connection you might have with other U.S. states. The regulation cited above indicates that an individual may only have one domicile. Based on the fact outlined in your letter, your U.S. domicile is Illinois. As a result, you should continue to file Illinois income tax returns when required and all income sources (or deductions) will be allocable to Illinois pursuant to IITA Section 301(a). IITA Section 502(a) outlines when Illinois income tax returns are required for individuals:

- (a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for the taxable year:
  - (1) For which such person is liable for a tax imposed by this Act, or
  - (2) In the case of a resident ...for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

As a U.S. citizen, the rules for filing income, estate, and gift tax returns and paying estimated tax are generally the same whether you are in the United States or abroad. See IRS Publication 54, page 2 at [www.irs.gov/pub/irs-pdf/p54.pdf](http://www.irs.gov/pub/irs-pdf/p54.pdf) Pursuant to Publication 54, your worldwide income is subject to U.S. income tax, regardless of where you reside.

Your letter does not mention your source of income in Nigeria. Should you have income from a Nigeria employment situation, you may be entitled to the foreign earned income exclusion at the federal level. According to Section 911 of the Internal Revenue Code, a qualifying individual who works abroad and receives earned income from foreign sources may elect to exclude up to \$87,600 for tax year 2008 and \$91,400 for 2009 of foreign earned income attributable to the period of residency in the foreign country.

To the extent you may qualify for the foreign earned income exclusion, the income from your employment in Nigeria excluded under IRC Section 911 will not be a part of your base income subject to Illinois income taxation. This is because the calculation on income subject to Illinois income taxation begins with federal adjusted gross income, and generally the amount excluded under IRC Section 911 is not part of your adjusted gross income.

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. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax