

General Information Letter: Taxpayer domiciled in Illinois continues to be domiciled in Illinois during a temporary absence.

August 3, 2009

Dear:

This is in response to your letter dated May 19, 2009 in which you state the following:

I am writing to request a legal interpretation. I am currently a resident of the state of Illinois. I have my driver's license here, a bank account and my residence. I also voted here in November of last year. In about two weeks, I am finishing up graduate school at the UNIVERSITY.

My question concerns my next job. I am going through a background check now and plan to join the U.S. State Department as a foreign service officer (diplomat). After training in CITY, I will be living overseas in foreign countries full-time, except for brief visits to relatives. Illinois will remain my home state, although I don't own any property here and will not be living here, either.

Regarding taxes, my question is whether I will have to pay income tax. My understanding is that income earned while living full-time out of state is not taxable, but I am asking for clarification, please.

I have a second question. Would my residency and/or tax status change if we were to buy a home in STATE, then rent it out to my wife's parents on a full-time basis?

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 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. ...

Based on the facts outlined in your letter, you will continue to be an Illinois resident while working abroad as a member of the Foreign Service. As a result, you should continue to file Illinois income tax returns and all income sources (or deductions) will be allocable to Illinois pursuant to IITA Section 301(a).

You ask whether your residency and/or tax status would change if you purchased property in STATE to rent to your in-laws. The answer to this question is "no." Simply purchasing property in another state will not change your residency as exemplified in the Example 3 of the Illinois Administrative Code Section 100.3020(c)(3). In the example, a Minnesota resident purchased a home in Illinois. The purchase itself did not change his Minnesota residency. At the end of the example, it states that if the facts were reversed in that an Illinois resident purchased a home in Minnesota, the same would be true: the Illinois resident would continue to be domiciled in Illinois despite buying a home in Minnesota.

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