

The Department will not issue ruling determining residency.

September 9, 2018

Re: Residency

Dear Xxxx:

This is in response to your letter dated June 18, 2018, in which you requested information regarding your liability for Illinois individual income tax while working in Thailand. The nature of your request and the information you have provided require that we respond with a General Information Letter, which 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 found on the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

I am contacting you with a question regarding Illinois State Income Tax liability.

My question is whether I would be liable for Illinois state income tax as a non-resident domiciliary? I work for the federal government and will be posted to COUNTRY for a tour of 2-4 years beginning in August 2018. As a U.S. federal employee, I am required to maintain a state domicile, Illinois in my case, for the duration of the tour. IITA defines resident for tax purposes as an individual “. . . who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year.” But it's unclear if one is a tax resident if domiciled in Illinois but absent for a permanent and not-transitory purpose. The regs go on to state that the purpose of the tax residency definition is to “. . . exclude from this category all individuals who, although domiciled in Illinois, are outside Illinois for other than temporary or transitory purposes and, hence, do not obtain the benefit of Illinois government.” Since I will be living abroad, i.e., outside of Illinois, for the entire year beginning in 2019, I would consider my assignment not to be characterized as one of temporary or transitory nature, as I will not be obtaining the benefits of IL's government. Indeed, my only potential visits to Illinois would be of temporary nature to visit my aging parents.

Could you please confirm whether my interpretation is correct? In other words, if I am residing in COUNTRY for 2-4 years, I would not be liable for Illinois state income tax?

RULING

Residency determinations are very dependent on the facts and circumstances of each case, but individuals domiciled in Illinois who are on short-term assignments overseas generally remain liable for Illinois income tax.

IITA section 1501(a)(20)(A) defines the term “resident” as “[a]n 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 discussing “temporary or transitory purposes,” Regulation section 100.3020 focuses on whether the absence will be for a short and definite or long and indefinite period of time. In *Grede v. Illinois Department of Revenue*, 2013 IL App (2d) 120731-U (April 22, 2013), the Illinois Appellate Court addressed this question.

Mr. Grede, an executive vice president at the Chicago Board of Trade, had resided in Illinois for a number of years with his wife and two children. In 1999, he was recruited to launch a stock exchange in Hong Kong and serve as its deputy chief operating officer. He signed a three-year contract and began working April 1, 2000. His family remained in Illinois.

He opened a bank account in Hong Kong, as required to deposit his paychecks. He maintained brokerage and bank accounts in Illinois and regularly transferred funds to support his family. He signed extended the six-month lease on an apartment in Hong Kong several times, eventually signing a two-year lease. In 2003, Mr. Grede learned his employment contract would not be renewed, and he returned to Illinois.

On his 2001 Illinois income tax return, Mr. Grede reported his status as married filing separately and claimed to be a non-resident. The Department determined that Mr. Grede remained a resident and issued a notice of deficiency. The Grede's argued that the decision not to move their children and enroll them in school in Hong Kong should not be considered a failure by Mr. Grede to abandon his Illinois domicile. In response, the Department argued that the steps taken toward abandoning their Illinois domicile were limited. The appellate court held that the Department's determination that the Grede's had not abandoned their Illinois domicile was not clearly erroneous.

However, the appellate court found that Mr. Grede nevertheless was absent for more than a temporary or transitory purpose and did not meet the statutory definition of resident. In so finding, the appellate court relied on testimony that renewing employment contracts with senior officers was common practice, and Mr. Grede's main incentive for accepting the job in Hong Kong was the receipt of stock options lasting up to 10 years that did not fully vest until he completed 5 years. Given that Mr. Grede reasonably expected his employment would potentially last as long as 10 years as specified in the options contract, the Department's decision that he remained a resident was clearly erroneous.

As stated above, this is a general information letter 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 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 Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (312) 814-1722.

Sincerely,

Brian E. Fliflet
Deputy General Counsel, Income Tax