

Individuals domiciled in Illinois who are on short-term assignments overseas generally remain liable for Illinois income tax

April 15, 2019

Dear Xxxx:

This is in response to your letter dated January 2<sup>nd</sup>, 2019, in which you request a Private Letter Ruling on behalf of NAME. 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](http://www.tax.illinois.gov).

Your letter states as follows:

***RE: Personal Income Tax Ruling Request for NAME***

*I am submitting this ruling request pursuant to Illinois Department of Revenue Regulations Section 1200.110 on behalf of NAME. I am attaching Form 2848 (Power of Attorney).*

*Issue Presented*

*NAME would like a declaratory ruling that she is not a resident of Illinois for purposes of state personal income tax for 2018 and subsequent tax years.*

*Statement of Facts*

*NAME has worked for BUSINESS for several decades. BUSINESS coordinates the worldwide COMPANY network which supports COUNTRY companies around the world. NAME moved to Illinois in 2000. She worked for BUSINESS as its representative for the U.S. Midwest until 2015. During that time, NAME and her husband purchased a condominium in CITY. NAME and her husband filed joint income tax returns in Illinois during those years. In February 20XX, NAME was reassigned by BUSINESS to COMPANY. At the time, NAME signed a three year contract which required her to live and work in COUNTRY. The contract was automatically renewed for three years in 20XX. The contract renews automatically every year. NAME does not know how long her employer will require her to remain in COUNTRY. However, she will not be able to return to Illinois with BUSINESS because her former position has been filled. NAME believes that if she is reassigned by BUSINESS after her current contract, she will be moved to STATE.*

*NAME husband had originally planned to move to COUNTRY. But a job opportunity in COUNTRY fell through and he remained in CITY. He lives in the condominium jointly owned with NAME. Other than a few trips to visit her husband, NAME has not spent any significant time in Illinois*

since departing in February 20XX. She has no other family living in the state. She owns no other property in the state. And she has no plans to return to Illinois to live.

#### *Contracts*

I am in possession of the employment contract between BUSINESS and NAME. The contract is, unfortunately, in COUNTRY. We can have the contract translated if the Department finds it necessary to make a ruling.

#### *Tax Period.*

NAME requests a ruling for the tax year 2018 and subsequent years assuming her status does not change. NAME is not under audit by and is not involved in any litigation with the Illinois Department of Revenue.

#### *No Previous Rulings.*

The Illinois Department of Revenue has never ruled on this issue (or any issue) with respect to NAME. Neither NAME nor any representative of hers has ever submitted the same or similar request to the Illinois Department of Revenue.

#### *Statement of Authorities (in Support).*

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 Illinois. According to Section 1501(20) of the IITA, 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.

According to the Department regulations, there is a presumption that an individual is not a resident if he or she is absent from Illinois for one year or more. Section 100.3020(f) of the Illinois Administrative Code ("IAC").

Moreover, the Department regulations state that an individual domiciled in Illinois loses Illinois domicile:

by locating elsewhere with the intention of establishing the new location as his or her domicile; and

by abandoning any intention of returning to Illinois. Section 100.3020(d)(2)2) (IAC).

NAME has been living in COUNTRY since February 20XX. She has no intention of returning to Illinois on a permanent basis.

Moreover, an appellate court decision seem particularly on point. *Grede v. Illinois Dept. of Revenue*, Ill. App. Ct., 2nd Dist., Dkt. No. 2-12-0731, 04/22/2013 presented a similar situation. In that case, Grede lived in Illinois but took a job in Hong Kong. He owned a house in Illinois and filed a joint Illinois return with his wife. The court held that domicile is not dispositive of residency and that an

*individual who is absent from the state for other than a temporary purpose qualifies as a nonresident. NAME is in a similar situation. She is in COUNTRY and will be there indefinitely.*

*While the Grede case is right on point, the opinion was issued pursuant to Illinois Supreme Court Rule 21, which limits its precedential value.*

*Still, the statutory and regulatory authorities seem to indicate that a person who is not living in Illinois and has no intention of doing so in the future is not a resident for Illinois income tax purposes.*

*Statement of Authorities (in Opposition).*

*I have not found any case law that would indicate that NAME is a resident of Illinois. However, there have been several administrative rulings that sided with the Department of Revenue on similar issues. These rulings are distinguishable from the NAME case.*

*In IT 14-03, Illinois Decisions in Department of Revenue Hearings, the administrative law judge found that a taxpayer who worked overseas in 2008 remained a resident for Illinois tax purposes. The taxpayer in that case worked overseas under a part year contract. The judge determined that the taxpayer intended to and did return to Illinois when the contract ended.*

*Similarly, in IT 09-0024-GIL, the taxpayer lived and worked in Illinois. The taxpayer accepted a position with the United States State Department. But the taxpayer noted in his request that "Illinois will remain my home state." There is not much detail in this general information letter. The taxpayer did say that he had an Illinois driver's license and continued to vote in the state. Interestingly, in a letter ruling addressing a Foreign Service officer, the department noted that an individual who is absent for one year or more is presumed to be a non-resident of Illinois. (Illinois Private Letter Ruling No. IT 91-0034-PLR).*

*Trade Secrets.*

*This ruling request contains no trade secret information that will require deletion. However, NAME requests that should a ruling be issued anything identifying her or her employer be redacted.*

*Conclusion*

*NAME requests a ruling that she is not a resident of Illinois for purposes of the state personal income tax. She has not lived in Illinois since 20XX. And she has no plans to return. We request the ruling because there remains some uncertainty about the application of the law. There is a presumption that NAME is not a resident. But she owns a condominium with her husband in Chicago. NAME does not believe that the ownership of a condominium in the state alone is enough to establish residency. But that is why she requests clarification.*

*Thank you for your time and consideration of this request. Please inform me if you have any questions about this request or if NAME can provide you with any more information in support thereof.*

## **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 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 have any further questions regarding this letter, you may contact me at (312) 814-3185.

Sincerely,

Evan Schanerberger

Legal Counsel – Department of Revenue