

IT 21-0001-GIL 04/14/2021 RESIDENCY

Income earned in a foreign country not taxable if taxpayer established a new domicile. (This is a GIL.)

April 14, 2021

Re: Illinois income tax

Dear NAME:

This is in response to your letter dated March 24, 2021, in which you request a letter ruling regarding Illinois income tax law. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

My name is NAME a OCCUPATION licensed ##### in the state of Illinois. I was advised by the person I talked to yesterday at the Illinois Department of Revenue to contact the LEGAL SERVICES OFFICE as they could not answer my question.

I have a client who was an Illinois resident until 2007 when he moved to COUNTRY where he moved his family and works for his Illinois based S Corporate employer. He also has an ownership interest in his employer and receives an annual K-1 from which he uses to report ILLINOIS income. The taxpayer also has not been a resident of another state except when taxpayer was a college student. The taxpayer plans to live in another state when he moves his family back to the USA. The wife of the taxpayer is a Brazilian national and has become a USA citizen.

My questions are multiple:

- Are taxpayer's total earned wages (income) while in foreign country not taxable in Illinois?
- Taxpayer files a FORM 2555 with his Federal Tax Return. Is it only the EARNED INCOME EXCLUSION that is not taxable in Illinois in taxpayer's situation?
- Are the taxpayer's total earned (income) wages not taxable in Illinois?

I look forward to receiving your supported answers and thank you in advance.

RULING

Section 1501(a)(20)(A) of the Illinois Income Tax Act defines resident as “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;” Domicile “is the place in which an individual has voluntarily fixed the habitation of himself or herself 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 adoption of some other permanent home.” 86 Ill. Admin. Code § 100.3020(d). An Illinois resident “loses Illinois domicile: 1) by locating elsewhere with the intention of establishing the new location as his or her domicile; and 2) by abandoning any intention of returning to Illinois.” 86 Ill. Admin. Code § 100.3020(d).

Based on the information provided, your client moved to COUNTRY with his family in 2007 and has no intention of returning to Illinois. If the move was indefinite and not temporary or transitory, that would indicate a change of domicile. Your client still would be taxable on his Illinois-source income as reported on the Form K-1-P or otherwise but would not owe Illinois income tax on income earned in COUNTRY.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian Fliflet
Acting General Counsel