

ADMINISTRATIVE CODE

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 100 INCOME TAX
SECTION 100.3020 RESIDENT (IITA SECTION 301)**

Section 100.3020 Resident (IITA Section 301)

- a) General definition. The term "resident" is defined in IITA Section 1501(a)(20) to mean:
- 1) an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year;
 - 2) the estate of a decedent who, at his or her death, was domiciled in Illinois;
 - 3) a trust created by the will of a decedent who, at his or her death, was domiciled in Illinois; and
 - 4) an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable. For the purpose of this subsection (a)(4), a trust is considered irrevocable to the extent that the grantor is not treated as the owner of the trust under 26 USC 671 through 678.
- b) Individuals. The purpose of the general definition is to include in the category of individuals who are taxable on their entire net income, regardless of whether derived from sources within or without Illinois, and all individuals who are physically present in Illinois enjoying the benefit of its government, except those individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in Illinois, are outside Illinois for other than temporary and transitory purposes and, hence, do not obtain the benefit of Illinois government. If an individual acquires the status of a resident by virtue of being physically present in Illinois for other than temporary or transitory purposes, he or she remains a resident even though temporarily absent from Illinois. If, however, he or she leaves Illinois for other than temporary or transitory purposes, he or she ceases to be a resident. If an individual is domiciled in Illinois, he or she remains a resident unless he or she is outside Illinois for other than temporary or transitory purposes.
- c) Temporary or transitory purposes. Whether or not the purpose for which an individual is in Illinois will be considered temporary or transitory in character will depend upon the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through Illinois on his or her way to another state, or is here for a brief rest or vacation or to complete a particular transaction, perform a particular contract, or fulfill a particular engagement that will require his or her presence in Illinois for but a short period, he or she is in Illinois for temporary or transitory purposes and will not be a resident by virtue of his or her presence here. If, however, an individual is in Illinois to improve his or her health and his or her illness is of such a character as to require a relatively

long or indefinite period to recuperate, or he or she is here for business purposes that will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he or she is in Illinois for other than temporary or transitory purposes and, accordingly, is a resident taxable upon his or her entire net income even though he or she may also maintain an abode in some other state.

- 1) EXAMPLE 1. X is domiciled in Fairbanks, Alaska, where he had lived for 50 years and had accumulated a large fortune. For medical reasons, X moves to Illinois where he now spends his entire time, except for yearly summer trips of about three or four months duration to Fairbanks. X maintains an abode in Illinois and still maintains, and occupies on visits there, his old abode in Fairbanks. Notwithstanding his abode in Fairbanks, because his yearly sojourn in Illinois is not temporary or transitory, he is a resident of Illinois and is taxable on his entire net income.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of original domicile and Alaska is the state in which the person is present for the indicated periods and purposes, X is not a resident of Illinois within the meaning of the law, because he is absent from Illinois for other than temporary or transitory purposes.

- 2) EXAMPLE 2. Until the summer of 1969, Y admitted domicile in Illinois. At that time, however, to avoid the Illinois income tax, Y declared himself to be domiciled in Nevada, where he had a summer home. Y moved his bank accounts to banks in Nevada and each year thereafter spent about three or four months in Nevada. He continued to spend six or seven months of each year at his estate in Illinois, which he continued to maintain, and continued his social club and business connections in Illinois. The months not spent in Nevada or Illinois he spent traveling in other states. Y is a resident of Illinois and is taxable on his entire net income, for his sojourns in Illinois are not for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Nevada is the state of his original domicile and the state in which the person is present for the indicated periods and purposes, Y is not a resident of Illinois within the meaning of the law because he is absent from Illinois for other than temporary or transitory purposes.

- 3) EXAMPLE 3. B and C, husband and wife, domiciled in Minnesota where they maintain their family home, come to Illinois each November and stay here until the middle of March. Originally they rented an apartment or house for the duration of their stay here but three years ago they purchased a house here. The house is either rented or put in the charge of a caretaker from March to November. B has retired from active control of his Minnesota business but still keeps office space and nominal authority in it. He belongs to clubs in Minnesota, but to none in Illinois. He has no business interests in Illinois. C has little social life in Illinois, more in Minnesota, and has no relatives in Illinois. Neither B nor C is a resident of Illinois. The connection of each to Minnesota, the state of domicile, in each year is closer than it is to Illinois. Their presence here is for temporary or transitory purposes.

AGENCY NOTE: If, in the foregoing example, the facts are reversed so that Illinois is the state of domicile and B and C are visitors to Minnesota, B and C are residents of Illinois.

- d) Domicile. Domicile has been defined as the place where an individual has his or her true, fixed, permanent home and principal establishment, the place to which he or she intends to return whenever absent. It 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. Another definition of "domicile" consistent with this is the place where an individual has fixed his or her habitation and has a permanent residence without any present intention of permanently moving. An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he or she retains that domicile until he or she acquires another elsewhere. Thus, if an individual who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his or her purpose in Illinois is achieved, he or she retains domicile in California and does not acquire domicile in Illinois. Likewise, an individual who is domiciled in Illinois and leaves the State retains Illinois domicile as long as he or she has the definite intention of returning to Illinois. On the other hand, an individual domiciled in California who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his or her California domicile and acquires Illinois domicile the moment he or she enters the State. Similarly, an individual domiciled in Illinois 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.
- e) Minors. The domicile of a minor is ordinarily the same as the domicile of his or her parents or guardians. If the father is deceased, the domicile of a minor is ordinarily the same as the domicile of the mother and vice versa. In either case, if the minor's parents are divorced, the domicile of the minor is the same as the domicile of the parent having custody.
- f) Presumption of residence. The following create rebuttable presumptions of residence. These presumptions are not conclusive and may be overcome by clear and convincing evidence to the contrary.
- 1) An individual receiving a homestead exemption (see 35 ILCS 200/15-175) for Illinois property is presumed to be a resident of Illinois.
 - 2) An individual who is an Illinois resident in one year is presumed to be a resident in the following year if he or she is present in Illinois more days than he or she is present in any other state.
- g) Proof of residence or nonresidence
- 1) The type and amount of proof that will be required in all cases to establish residency or nonresidency or to rebut or overcome a presumption of residence cannot be specified by a general regulation, but will depend largely on the circumstances of each particular case. The taxpayer may submit any relevant evidence to the Department for its consideration. The evidence may include, but is not limited to, affidavits and evidence of:
location of spouse and dependents; voter registration; automobile registration or driver's license; filing an income tax return as a resident of another state; home ownership or rental agreements; the permanent or temporary nature of work assignments in a state; location of professional licenses; location of medical professionals, other healthcare providers,

accountants and attorneys; club and/or organizational memberships and participation; and telephone and/or other utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence that may assist it in determining the taxpayer's place of residence.

- 2) The location of any corporation, foundation, organization or institution that is exempt from taxation under IRC section 503(c)(3) to which the taxpayer makes financial contributions, gifts, bequests, donations or pledges in any amount qualifying for a deduction as an IRC section 170(a) charitable contribution or as an IRC section 2055(a) bequest, legacy, devise or transfer is not evidence used to establish domicile or nondomicile, or residence or nonresidence, in any state.
- 3) If an individual is presumed under this Section to be a resident for any taxable year, he or she should file a return for that year even though he or she believes he or she was a nonresident who, as such, would not incur an Illinois income tax liability because he or she would have no income allocable or apportionable to Illinois. The return will enable the individual to avoid the possible imposition of penalties for failure to file under IITA Section 1001 should it later be determined that he or she was a resident for the taxable year. The return should be marked as a nonresident return, though Schedule NR is not required. The return should exhibit the computation of net income as though the individual were a resident. The line on the return provided for entering the tax liability should have the following notation: "No liability – nonresident". The return should be accompanied by a signed statement indicating which presumption of residence the individual was subject to and setting forth in detail the reasons why the individual believes he or she was a nonresident for the taxable year. The return should also be accompanied by any evidence, such as certificates or affidavits, that the individual is able to obtain showing that he or she was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so inform the individual and provide him or her with an opportunity to submit additional information supporting his or her contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:
 - A) that the individual is a resident for the taxable year; and
 - B) that the individual's net income for the taxable year is:
 - i) the amount reflected, with appropriate mathematical error adjustments under IITA Section 903(a)(1), on the return filed by the individual under this subsection (g)(3)(B)(i); or
 - ii) whatever other amount the Department has determined by an examination under IITA Section 904.
- 4) An individual who, for any taxable year, believes himself or herself to be a nonresident, but who is presumed to be a resident under this Section, may file a return (including a Schedule NR) as a nonresident if, as a nonresident, he or she incurs an Illinois income tax liability due to income allocated or apportioned to Illinois as a nonresident. However, the return should be accompanied by a signed statement indicating which presumption of residence the individual is subject to and setting forth in detail the reasons

why the individual believes he or she was a nonresident for the taxable year. The return should also be accompanied by any evidence, such as certificates or affidavits, that the individual is able to obtain showing that he or she was a nonresident for the taxable year. If the Department is not satisfied that the individual was a nonresident, it will so inform the individual and provide him or her with an opportunity to submit additional information supporting his or her contention. If the individual fails to submit additional information, or if the additional information submitted does not, when considered with the information appended to the return, overcome the presumption that the individual was a resident for the taxable year, the Department will issue a notice of deficiency asserting a liability against the individual on the following basis:

- A) that the individual was a resident for the taxable year;
- B) that the individual's net income for the taxable year is:
 - i) his or her entire base income, as reflected on the return with appropriate mathematical error adjustments under IITA Section 903(a)(1), less the appropriate standard exemption prescribed by IITA Section 204; or
 - ii) his or her entire base income, as determined by the Department in an examination under IITA Section 904, less the appropriate standard exemption prescribed by IITA Section 204.
- h) Military personnel. Under 50 USC App. 571, members of the U.S. Armed Forces (and commissioned officers of the U.S. Public Health Service) will not cease to be domiciled in Illinois solely by reason of their assignment to duty in other states for long periods. Domiciliaries of other states will not become Illinois residents under the Act solely by reason of their presence in Illinois under military orders.
- i) Resident: Legal Definition: Usage. The term "resident" is defined differently for different purposes. For example, an individual may be a "resident" for Illinois income tax purposes but not a "resident" eligible to vote (see IITA Section 15-1501(a)(20) with Sections 3-1 through 3-4 of the Election Code [10 ILCS 5/3-1 through 3-4]). Similarly, a person may be a resident of Illinois for Illinois income tax purposes and also a resident of another state for purposes of that state's income tax law (see IITA Section 15-1501(a)(20) with Ky. Rev. Stat. Ann. Section 141.010(17)).

(Source: Amended at 37 Ill. Reg. 5823, effective April 19, 2013)