

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3020 Resident (IITA Section 301)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

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 death was domiciled in Illinois;
 - 3) a trust created by the will of a decedent who at his death was domiciled in Illinois; and
 - 4) an irrevocable trust, the grantor of which was domiciled in Illinois at the time such trust became irrevocable. For the purpose of this subparagraph, a trust is considered irrevocable to the extent that the grantor is not treated as the owner thereof under 26 U.S.C. 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, 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 remains a resident even though temporarily absent from Illinois. If, however, he leaves Illinois for other than temporary or transitory purposes, he thereupon ceases to be a resident. If an individual is domiciled in Illinois, he remains a resident unless he 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 way to another state, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in

Illinois for but a short period, he is in Illinois for temporary or transitory purposes, and will not be a resident by virtue of his presence here. If, however, an individual is in Illinois to improve his health and his illness is of such a character as to require a relatively long or indefinite period to recuperate, or he is here for business purposes which 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 is in Illinois for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he 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 true, fixed, permanent home and principal establishment, the place to which he intends to return whenever he is absent. It is the place in which an individual has voluntarily fixed the habitation of himself 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 him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom. 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. 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 purpose in Illinois is achieved, he retains his domicile in California and does not acquire a domicile in Illinois. Likewise, an individual who is domiciled in Illinois and who leaves the state retains his Illinois domicile as long as he 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 California domicile and acquires an Illinois domicile the moment he enters the state. Similarly, an individual domiciled in Illinois loses his Illinois domicile:
 - 1) by locating elsewhere with the intention of establishing the new location as his 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 parents or guardians. If the father is deceased, the domicile of a minor is ordinarily the same as the domicile of his 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 and nonresidence If an individual spends in the aggregate more than nine months of any taxable year in Illinois it will be presumed that he is a resident of Illinois. An individual who is absent from Illinois for one year or more will be presumed to be a nonresident of Illinois. These presumptions are not conclusive, and may be overcome by other satisfactory evidence to the contrary.
- g) Proof of residence or nonresidence
 - 1) The type and amount of proof that will be required in all cases to rebut or overcome a presumption of residence or nonresidence 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. Such evidence may include, but is not limited to, affidavits, evidence of: voter registration, automobile or drivers license registration, filing an income tax return as a resident of another state, home ownership or rental agreements, club and/or organizational memberships and participation, telephone and/or other utility usage over a duration of time. In appropriate instances, the Department may request any relevant evidence which may assist it in determining the taxpayer's place of residence.

- 2) If an individual is presumed under this regulation (86 Ill. Adm. Code 100.3020) to be a resident for any taxable year, he should file a return for that year even though he believes he was a nonresident who, as such, would not incur an Illinois income tax liability because he would have no income allocable or apportionable to Illinois. Such a 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 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 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 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 with an opportunity to submit additional information supporting his 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 paragraph or
 - ii) whatever other amount the Department has determined by an examination under IITA Section 904.
- 3) An individual who, for any taxable year, believes himself to be a nonresident, but who is presumed to be a resident under this regulation (86 Ill. Adm. Code 100.3020) may file his return (including a Schedule NR) as a nonresident if, as a nonresident, he 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 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 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 with an opportunity to submit additional information supporting his 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 entire base income, as reflected on his 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 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 U.S.C. App. 574, 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 (cf. Section 15-1501(a)(20) of the IITA with Sections 3-1 through 3-4 of the Election Code (Ill. Rev. Stat., ch. 46, pars. 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 (cf. Section 15-1501(a)(20) of the IITA with Wis. Stats., ch. 71, sec. 71.01(1)).

(Source: Amended at 14 Ill. Reg. 6810, effective April 19, 1990)