

IT 14-03

Tax Type: Income Tax

Tax Issue: Income Earned In Illinois/Individual Residency

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
HAPPYVILLE, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,
Taxpayer**

No. XXXX

Account ID XXXX

Letter ID XXXX

XXXX

Tax Year 2007, 2008

Ted Sherrod

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Alphonse A. Talarico, Esq. for John Doe; Rebecca Kulekowskis, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by John Doe (“taxpayer”) of Department of Revenue (“Department”) Notices of Deficiency Letter ID number XXXX and XXXX issued by the Department on July 27, 2010 and March 29, 2011 for the tax years ended 12/31/07 and 12/31/08. The notices of deficiency propose to assess Illinois income tax regarding calendar years 2007 and 2008. During 2007, the taxpayer earned no income from employment and during 2008 the taxpayer earned all of his wage and salary income while working outside of the United States, in Anywhere. The sole issue presented in this case, as agreed to by the parties and memorialized in the pre-trial order, is whether the income the taxpayer earned during 2007 and 2008 was taxable by Illinois because the taxpayer remained a resident of Illinois during those years. A hearing to consider this matter was held on September 26 and September 27, 2013. Based on the evidence presented at this hearing, it is my

recommendation that this matter be decided in favor of the Department. In support of this recommendation, the following “findings of fact” and “conclusions of law” are made.

Findings of Fact:¹

Findings of Fact Regarding the Taxpayer’s Federal and Illinois Returns

1. The taxpayer did not file Illinois individual income tax returns for 2007 and 2008. Transcript of Hearing proceedings held September 27, 2013 (“Tr. II”) p. 51.
2. The taxpayer filed federal income tax returns for 2007 and 2008. *Id.*; Department Exhibit (“Ex.”) 1, 2. On both of these returns the taxpayer listed his address as being in Happyville, Illinois. *Id.* On his 2007 Federal income tax return, the taxpayer listed his address as “Main Avenue, Happyville, Illinois XXXXX.” Department Ex. 1. On his 2008 Federal income tax return, the taxpayer listed his address as “Western Avenue, Happyville, Illinois XXXXX.” Department Ex. 2. The taxpayer’s federal income tax return for 2007 was filed in April 2008 and the taxpayer’s federal income tax return for 2008 was filed in April 2009. Tr. II p. 42.
3. On both the taxpayer’s 2007 and 2008 federal returns, the taxpayer listed his marital status as “single” and claimed one exemption for himself. Department Ex. 1, 2.
4. The taxpayer’s 2007 return indicated that he earned no income from employment in that year; all of the taxpayer’s income for that year was from interest, dividends and capital gains. Department Ex. 1.
5. The taxpayer’s 2008 federal income tax return and accompanying W-2 form for that year indicates that the taxpayer was employed by ABC BUSINESS, Florida, during that year and received taxable compensation from this company in the amount of \$XXXX. Department Ex. 2.

¹ Unless otherwise noted, findings of fact apply to the tax years in controversy.

6. On an attachment to the taxpayer's Federal income tax return for 2008, the taxpayer reported: "In the latter part of August, 2008, I was retained by ABC BUSINESS, Florida, to work as a construction consultant for the U.S. Air-Force at Someplace Air-Field in Anywhere." *Id.*

Findings of Fact Regarding the Taxpayer's Visa

7. The taxpayer was issued a Visa permitting the taxpayer to work in Anywhere on or about August 23, 2008. Department Ex. 3. The taxpayer's Visa was for a six month period commencing August 4, 2008 and ending February 4, 2009. Tr. II p. 28; Department Ex. 3.
8. The taxpayer's Visa states that the taxpayer is a citizen of the United States. *Id.*

Findings of Fact Regarding the Taxpayer's Employment and Activities in Anywhere

9. On July 28, 2008, the taxpayer entered into a contract for employment bearing the heading "Special Terms & Conditions for Expatriate Personnel" accepting an offer of employment as a construction consultant with the job title "Construction Manager AFCP International" for the U.S. Air Force at Someplace Air Field in Anywhere from ABC BUSINESS, a company engaged in the provision of logistical support to the United States military based in Florida. Tr. II pp. 21-25; Department Ex. 3-5.
10. The document identified by the taxpayer as the taxpayer's employment contract (Tr. II p. 5) states as follows: "The expected duration of Employee's assignment [is as] stated in the Data Sheet...[.]" Department Ex. 5, p. 5. The "Data Sheet for Exempt Employees" signed by the taxpayer on July 29, 2008, indicates as the "Duration of Assignment" a period of 48 weeks "or completion of task order." Department Ex. 4.
11. The "Letter of Authorization" issued to the taxpayer in his capacity as an employee of ABC BUSINESS by the Air Force Civil Engineer Support Agency authorized the

taxpayer “to proceed to the location(s) listed for the designated deployment period set forth” in this document Department Ex. 3. The designated deployment period indicated in this document is from 7/21/08 through 8/19/09. *Id.* The locations designated for deployment in this document are: “Anywhere, Greenville and Blueville.” *Id.*

12. The taxpayer lived at the Someplace U.S. Air Force base; he did not purchase or rent property in which to reside while in Anywhere. Tr. p. 22.

13. The taxpayer’s employment contract states as follows: “ ‘Point of Origin’ ... The Point of Origin, as stated in the Data Sheet, is the geographical location from which the employee will be mobilized and demobilized.” Department Ex. 5 p. 6. The “Point of Origin” indicated in the Data Sheet is: “Main Avenue, Happyville, Illinois XXXX.” Department Ex. 4.

14. The taxpayer completed his employment in Anywhere and returned to Happyville, Illinois on February 22, 2009. Tr. II pp. 33, 34, 48, 49; Department Ex. 7.

Findings of Fact Regarding the Taxpayer’s Contacts with Illinois

15. During, 2007, the taxpayer resided in Illinois at Main Avenue, Happyville, Illinois. Tr. pp. 47-48. The taxpayer resided in Illinois during the entire calendar year 2007. Tr. II pp. 14, 47. During 2008, the taxpayer was physically present in Illinois until August 16th of that year when he departed for Anywhere. Department Ex. 7.

16. The taxpayer currently resides at Western Avenue, Happyville, Illinois. Tr. II pp. 41, 42. The taxpayer obtained his apartment at this address in February 2008. Tr. p. 40; Department Ex. 7.

17. Prior to August 2008, the taxpayer was unemployed. Tr. p. 16.

18. The taxpayer has had an Illinois driver’s license continuously since 2001 and retained a current Illinois driver’s license throughout the tax period in controversy. Tr. pp. 52-56.

19. The taxpayer returned to Illinois from Anywhere on February 22, 2009 and has remained in Illinois ever since his return. Tr. pp. 41, 42, 50, 51; Department Ex. 7.

20. The taxpayer's dentist and ophthalmologist are both located in Happyville, Illinois. Tr. pp. 57-59.

Conclusions of Law:

The issue presented in this case is whether the taxpayer was required to file Illinois income tax returns for the tax years ended 12/31/07 and 12/31/08. The taxpayer contends that he was not an Illinois resident because he abandoned his Illinois domicile and residence when he commenced employment in Anywhere in August 2008 and therefore was not required to file Illinois income tax returns. The Illinois Income Tax Act ("IITA") imposes a "tax measured by net income ... on every individual, corporation, trust and estate ...on the privilege of earning or receiving income in or as a resident of [Illinois]...[.]" 35 ILCS 5/201(a). Section 201(a) makes it clear that persons who are not residents of Illinois are not exempt from Illinois income tax. They are subject to Illinois income tax, so long as their physical presence and/or activities in Illinois contribute to their "earning or receiving income in [Illinois]...[.]" See also e.g., 35 ILCS 5/301(c) (prescribing how persons other than residents are to allocate items of income or deduction taken into account when computing base income), and 35 ILCS 5/302(a) and 5/304(a) (prescribing how non-residents are to allocate compensation and business income realized from activities conducted wholly within Illinois, and also prescribing how non-residents are to apportion business income from activities conducted both inside and outside of Illinois).

In the case of residents, tax is imposed upon the privilege of earning income or receiving income as a resident of Illinois. 35 ILCS 5/201(a). The United States Supreme Court has long acknowledged that residency alone provides the basis for state taxation of all of a resident's income, including passive income such as dividends, interest and capital gains. Oklahoma Tax

Commission v. Chickasaw Nation, 515 U.S. 450, 462 (1995); New York ex rel. Cohn v. Graves, 300 U.S. 308 (1937); Zunamon v. Zehnder, 308 Ill. App. 3d 69, 78 (1991) (“The due process clause does not prohibit a state from taxing its residents’ income, even income earned in another state.”).²

Section 1501(a)(20) of the IITA provides, in part, as follows:

Resident. The term “resident” means:

(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 ...[.]

35 ILCS 5/1501(a)(20)

As is evident from the foregoing, this section defines the term resident, and includes within the definition “an individual who is in this State for other than a temporary or transitory purpose during the taxable year; or ...who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year ...[.]” 35 ILCS 5/1501(a)(20). The text of the statutory definition of resident not only details two classes of individuals that are expressly included within the definition, but also implicitly denotes the exclusion of two classes of individuals that were not intended to be included within the definition. 35 ILCS 5/1501(a)(20). First, the legislature defined a resident to include “an individual ... who is in this State for other than a temporary or transitory purpose during the taxable year ...[.]”. From the foregoing, it is reasonable to infer that the legislature intended to exclude from the definition of resident an individual who is in the State for only temporary or transitory purposes during the taxable year.

Id. Moreover, one can justifiably deduce from the second clause of the statutory definition that

² During the hearing, the taxpayer testified as follows: “...I did not file an Illinois tax return in 2008 or 2007 because in both of those years – I was not employed within the state of Illinois[.] I had – there was no company that, you know, provided me any wages. There were no W-2s saying that I made any money in Illinois, so I did not file Illinois tax returns for that reason.” Tr. pp. 51, 52. This testimony assumes that the taxpayer was properly taxable as a non-resident since, as an Illinois resident, the taxpayer is taxable in Illinois on all of his income from whatever source derived, including passive investment income and income from outside of the state pursuant to the case law precedents noted above.

the legislature also intended to exclude from the definition of resident an individual who is domiciled in Illinois but who is absent from Illinois for other than temporary or transitory purposes during the taxable year. *Id.*

The Illinois General Assembly has granted the Department the authority to make reasonable rules and regulations relating to the administration of the IITA. 35 ILCS 5/1401. Pursuant to that authority, the Department has adopted a regulation that interprets and administers the sections of the IITA involving the taxation of residents, which is published at 86 Ill. Admin. Code section 100.3020. Illinois income tax regulation section 100.3020(b) provides, in pertinent part:

Section 100.3020 Resident ...

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 thereupon ceases to be a resident. If an individual is domiciled in Illinois, he or she remains a resident unless he or she is outside of Illinois for other than temporary or transitory purposes. ...

86 Ill. Admin. Code section 100.3020(b)

This subsection sets forth the Department's own, authoritative interpretation of the text of the statutory definition of resident, as it applies to individuals. First, the regulation states that the purpose of the definition of the term "resident" is to include into a single category all individuals who are taxable on their entire net income, regardless of whether it was derived from sources within or without Illinois. 86 Ill. Admin. Code section 100.3020(b). Excluded from this category are all "individuals who are here temporarily ...[.]" *Id.* Also excluded are "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[.]” *Id.* In sum, the Department’s own, authoritative regulation makes it plain that, in addition to defining who is included within the definition of an Illinois resident, there are two classes of individuals whom the legislature intended not to be Illinois residents: Individuals who are physically present in Illinois only for temporary or transitory purposes during a particular year; and Illinois domiciliaries who are absent from Illinois for other than temporary or transient purposes during a particular year. *Id.*

In the instant case, the Department introduced into the record notices of deficiency assessing the taxpayer for failure to file returns for the tax years ended December, 2007 and December, 2008. Department Ex. 8. When the Department introduced these notices of deficiency into evidence under the certificate of the Director, it presented *prima facie* proof that the taxpayer was a resident of Illinois for the years at issue. 35 ILCS 5/904(a)-(b); Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1st Dist. 1981). The Department’s *prima facie* case is a rebuttable presumption. See Branson v. Department of Revenue, 168 Ill. 2d 247, 260 (1995). After the Department introduces its *prima facie* case, the burden shifts to the taxpayer to establish that the Department’s determination is not correct. *Id.*

In this matter, therefore, after Department introduced the notices of deficiency at issue under the Certificate of the Director of Revenue, the taxpayer had the burden of production and persuasion to show, by a preponderance of competent evidence, that the Department’s determination that the taxpayer was a full year resident of Illinois during 2007 and 2008 was not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333 (1958); PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 34 (2002). To overcome this burden, moreover, the taxpayer must present documentary evidence that is closely associated with books and records. Fillichio, *supra* at 333; Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203,

217 (1st Dist. 1991): ("To overcome the Department's *prima facie* case, a taxpayer must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions."). Pursuant to the foregoing, it was incumbent upon the taxpayer to produce evidence showing that the taxpayer changed his residence from Illinois to Anywhere or some other country and therefore was not in the category of "individuals who are physically present in Illinois enjoying the benefits of government" constituting "residents" pursuant to regulation section 100.3020(b).

As previously noted, an Illinois domiciliary that is in the state more or less permanently is classified as a "resident" by regulation section 3020(b) ("If an individual is domiciled in Illinois, he remains a resident unless he is outside of Illinois for other than temporary or transitory purposes."). Section 100.3020(d) of the IITA's regulations on residency define a "domicile" 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." 86 Ill. Admin. Code section 100.3020(d). This regulation further provides that "if an individual has acquired a domicile at one place, he or she retains that domicile until he or she acquires another elsewhere." Accordingly, the taxpayer remains an Illinois domiciliary and is, therefore, an Illinois resident pursuant to regulation 100.3020(b) until he or she establishes a new domicile in another state or country. Moreover, the regulation, at subsection (d) further provides that an individual who is domiciled in Illinois can only give up his or her domicile by "locating elsewhere with the intention of establishing a new location as a domicile, and by abandoning any intention of returning to Illinois." 86 Ill. Admin. Code section 100.3020(d).

As noted above, regulation 100.3020(b) provides that: "If an individual is domiciled in Illinois, he or she remains a resident unless he or she is outside of Illinois for other than a

temporary or transitory purpose...[.]” 86 Ill. Admin. Code section 100.3020(b). This rule is an exception to the general rule that an Illinois domiciliary is an Illinois resident.

With respect to the tax year 2007, the record contains no evidence that the taxpayer lived outside of Illinois at any time during that year. Indeed, to the contrary, the record indicates that the taxpayer resided at Main Avenue in Happyville Illinois for the entire calendar year 2007. Tr. pp. 14, 47; Department Ex. 1.

Once the Department's *prima facie* case is established, the burden rests with the taxpayer to present evidence closely identified with books and records to show that the Department's determination is incorrect. Balla, *supra*. Based upon the record, I conclude that the taxpayer remained domiciled in Illinois during 2007 and was therefore an Illinois resident during that year because the taxpayer failed to present any evidence that the taxpayer established a domicile anywhere else during that year. See 86 Ill. Admin. Code section 100.3020(d) ("If an individual has acquired a domicile in one place, he retains or she that domicile until he acquires another elsewhere"). Moreover, the taxpayer provided no evidence that he was outside of Illinois for other than a temporary or transitory purpose during 2007, and therefore subject to taxation as a non-resident pursuant to regulation 100.3020(b). Because the taxpayer presented no evidence of any kind that he established a new domicile in any other state or country during 2007, or that he was outside of Illinois for other than temporary or transitory purposes during 2007, I find that the taxpayer remained domiciled in Illinois and subject to the state's income tax during that year.

The record indicates that the taxpayer accepted employment in Anywhere and physically relocated to that country on August 16, 2008. Department Ex. 7. Given the foregoing, the sole remaining issues are whether the taxpayer changed his domicile from Illinois to Anywhere in 2008 as a result of physically leaving the state in 2008 and whether, in the alternative, notwithstanding his status as an Illinois domiciliary, the taxpayer should be taxed as a non-

resident in 2008 because he was absent from Illinois for other than temporary or transitory purposes during that year.

Did the Taxpayer change his domicile from Illinois to Anywhere in 2008?

As previously noted, section 1501(a)(20) of the IITA provides as follows:

Resident. The term “resident” means:

(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 ...[.]

35 ILCS 5/1501(a)(20)

The Illinois income tax regulations, at section 100.3020(d), contains a subsection interpreting the Legislature's use of the term “domicile” within section 1501(a)(20). This regulatory subsection provides:

(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 him or her to adopt 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 in 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 a 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 a 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 to return to California loses his or her California domicile and acquires an Illinois domicile the moment he or she enters the state. Similarly, an individual domiciled in Illinois loses his or her 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 section 100.3020(d)

The test the regulation sets out for determining whether an individual taxpayer has changed his or her domicile from Illinois to another place is consistent with tests the Illinois courts have long used to determine the same issue for purposes of Illinois taxation. For example, in Holt v. Hendee, 248 Ill. 288, 295-96 (1911), the Illinois Supreme Court reviewed a trial court's determination that an individual had not changed his domicile from Illinois, when determining whether he was subject to Illinois personal property tax. There, the court stated:

[I]n order to effect a change of domicile, there must be an actual abandonment of the first domicile coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence within another jurisdiction coupled with the intention to make the last acquired residence a permanent home. In order to bring about a change of residence, it is necessary that there be not only an intention to change the residence, but the change must actually be made by abandoning the old and permanently locating in the new place of residence.

Hendee, *supra* at 295-96.

The taxpayer argues that the question of a person's domicile is one of intent. Tr. pp. 74-75. He relies upon testimony indicating that he intended to reside in Anywhere or some other country and establish a permanent domicile there. Transcript of Hearing proceedings held September 26, 2013 (“Tr. I”) pp. 16-22, Tr. II pp. 6-14, 16-19, 25-28, 70. The items of documentary evidence the taxpayer cites to prove the taxpayer's intent to make Anywhere his domicile include travel documents indicating that the taxpayer was physically present in Anywhere from August 16, 2008 until February 22, 2009 and that all of his wage and salary compensation during 2008 was attributable to his employment outside of Illinois in Anywhere, during that year. Department Ex. 2, 7.

Regulation 100.3020(g) enumerates factors that, while not conclusive, are probative in determining whether an individual has abandoned his Illinois domicile. This provision of the regulations states, in pertinent part, as follows:

(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.

86 Ill. Admin. Code section 100.3020(g)

Pursuant to the foregoing, the factors to be evaluated in determining whether a taxpayer has become a domiciliary of another state include the location of dependents³, voter registration, automobile registration and licensure, owned or rented property, medical, legal and other professional service providers to the taxpayer, club memberships and utility usage. The regulation further states that the "permanent or temporary nature of work assignments" is an important factor to be considered.

The evidence in the instant case shows, among other things, that the taxpayer retained an Illinois residence and drivers license while he was in Anywhere. Tr. II pp. 40 ("I was living at my new apartment [the taxpayer's current residence] or the apartment I've had since February 2008 which is Western Avenue, Happyville, Illinois...[.]"); Tr. II pp. 52-56. It also indicates that the taxpayer kept his Happyville based ophthalmologist and dentist by whom the taxpayer was treated before he left for Anywhere and after he returned from that country. Tr. pp. 57-61; Department Ex. 6. Finally, the record indicates that the taxpayer's contract of employment was for only 48 weeks. Department Ex. 5. These are all factors the aforementioned regulation deems to be probative in weighing whether one has overcome the presumption of Illinois

³ The record indicates that the taxpayer had no dependents during the tax years in controversy. Department Ex. 1, 2.

domicile and residence arising from the Department's *prima facie* correct determination of in-state residency.

Upon an examination of the record and the evidence, and applying the factors enumerated in regulation 100.3020(g), I agree with the Department that the record in this case does not show that, when the taxpayer physically removed himself from Illinois to Anywhere, he intended to establish a new domicile in Anywhere and to abandon any intent to return to his domicile in Happyville, Illinois. Specifically, the evidence shows that the taxpayer maintained an apartment in Illinois during his absence while overseas, and that he never abandoned many significant associative ties to this state (i.e. his Illinois driver's license and medical support professionals) even though he physically removed himself from Illinois for a six-month period commencing on August 16, 2008. The record also indicates that the taxpayer's work assignment in Anywhere was scheduled to be temporary rather than permanent, with the taxpayer's employment contract for work in that country stating that the anticipated duration of his employment was 48 weeks. Department Ex. 5. I also find it significant that the taxpayer never acquired or leased a dwelling place in Anywhere. The record shows that he remained at the U.S. Someplace Air Force Base during the entire period of time he was employed to perform services in that country. Tr. II p. 22. Nor is there any evidence in the record that the taxpayer had any other associative contacts with Anywhere as might be demonstrated by evidence that he owned or rented property in Anywhere, obtained a driver's license to drive in Anywhere or qualified to vote there.

Just as important on the issue whether the taxpayer abandoned any intent to return to his domicile in Illinois is the fact that the taxpayer expressly indicated that he intended to return to Illinois in his employment contract which he signed prior to leaving for Anywhere on July 28, 2008. Department Ex. 5. This contract, which bore the title "Special Terms & Conditions for Expatriate Personnel", states as follows: "The Point of Origin, as stated in the Data Sheet is the

geographical location from which the Employee will be mobilized and demobilized.” *Id.* at p. 6. The “Data Sheet for Exempt Employees” referenced above indicates that the “Point of Origin” is “Main Avenue, Happyville, Illinois.” Department Ex. 4.

The record also reveals that the taxpayer returned to, and stayed in Illinois after his employment in Anywhere terminated. Tr. pp. 41, 42, 50, 51. When considering whether an individual has abandoned Illinois as his domicile, the Illinois courts have found it appropriate for the fact finder to consider not only the facts that occurred during a particular time when a dispute arose, but also the facts both prior to and after such time. So, for example, in Viking Dodge, Inc. v. Hoffman, 147 Ill. App. 3d 203 (3d Dist. 1986), the appellate court overturned the trial court’s ruling which allowed a plaintiff to use substitute service, which is available only for service of process to a non-resident of Illinois, to serve a civil complaint to a student from Illinois who was attending college in Arizona. Viking Dodge, *supra* at 205. When determining whether the student had abandoned any intent to return to his domicile in Illinois at the time service was attempted, the appellate court took into account the fact that the student returned to Illinois after college. *Id.* The Court held that substitute service was ineffectual, because the evidence showed that the individual never abandoned any intent to keep Illinois as his domicile. *Id.*

For the aforementioned reasons, in the instant case, I find that the taxpayer has not shown, by a preponderance of the evidence, that the taxpayer abandoned his intent to return to his domicile in Illinois prior to or during 2008. Thus, I agree with the Department that the taxpayer has not established that during that year, the taxpayer changed his domicile from Illinois to Anywhere. Hendee, *supra* at 295-96; Viking Dodge Inc., *supra* at 205; 86 Ill. Admin. Code section 100.3020(d), (g). Consequently, the taxpayer has failed to prove that he was not domiciled in Illinois during 2008.

Notwithstanding that the taxpayer remained an Illinois domiciliary, was he a non-resident because he was absent from Illinois for other than a temporary or transitory purpose during 2008?

The applicable regulation again provides much needed guidance on this question, which calls for an interpretation of the phrase "temporary or transitory" purpose as used in 35 ILCS 5/1501(a)(20). Specifically, subsection (c) of regulation 100.3020 provides:

(c) Temporary or transitory purposes. Whether or not 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. They 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 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 another state.

86 Ill. Admin. Code section 100.3020(c)

The foregoing subsection sets forth Department's own description of the types of purposes that it will consider to be temporary or transitory as well as a description of the types of purposes that it will consider to be other than temporary or transitory. While this particular subsection describes such purposes in terms of whether an individual is inside of Illinois, the regulation does not imply that the Department intends to interpret the statutory phrase to have different meanings depending upon whether the individual is present in as opposed to absent from Illinois. That is, the regulation does not reflect that the Department will consider a non-domiciliary of Illinois who is present in Illinois, for example, for business purposes which require a long or indefinite

period to accomplish, to be here for other than a temporary or transitory purpose, but that it will consider an Illinois domiciliary who is absent from Illinois for the very same reason to be absent from Illinois only for a temporary or transitory purpose.

The provision of regulation section 100.3020(c) that is most relevant to this dispute is the Department's statement that, generally, if an individual is present in Illinois "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... he or she is in Illinois for other than temporary or transitory purposes...[.]" 86 Ill. Admin. Code section 100.3020(c).

In the instant case, the record indicates that the taxpayer's work in Anywhere was only temporary or transitory. Each of the employment related documents admitted into evidence has a definite ending date indicating when the taxpayer's employment in Anywhere was anticipated to terminate. Specifically, the taxpayer's contract to work in Anywhere and related data sheet indicate the duration of the taxpayer's contract as "48 weeks." See Department Ex. 5, p. 4 ("Expected Duration of Assignment"); Department Ex. 4 (line item titled "Duration of Assignment"). Moreover, the taxpayer's "Letter of Authorization" indicates that the taxpayer was being given a "Deployment Period Start" date of August 18, 2008 and a "Deployment Period End" date of August 19, 2009. These documents clearly indicated that the taxpayer was being employed for a limited duration of time rather than indefinitely or permanently. Indeed, the taxpayer's contract expressly states that: "Employee understands and agrees that this employment relationship is 'at will,' that either the Employee or the Employer may end the employment at any time for any reason and that there is no guarantee of continued employment beyond the period and length of the Terms & Conditions." Department Ex. 5, p. 1.

Further evidence that the taxpayer's absence from Illinois while in Anywhere was not permanent or indefinite can be inferred from the fact that the taxpayer only applied for and

received a six-month visa. Tr. pp. 28-29; Department Ex. 3. While the taxpayer sought to attribute the short length of his visa to an oversight (Tr. pp. 28-29), the term of the taxpayer's visa is completely consistent with employment documentation contained in the record indicating that his guaranteed period of employment in Anywhere was, barring unforeseen developments, anticipated to last only a limited period of time.

The taxpayer argues that, while each of the employment related documents in the record identified a start and termination date, neither expressly precluded his working beyond the termination dates that were specified, and that the taxpayer reasonably anticipated an opportunity to continue to work in the Middle East based upon the taxpayer's prior lengthy employment experience overseas, and offers the taxpayer received prior to his acceptance of employment to work in Anywhere. Tr. II pp. 11, 12, 16-19, 61, 62, 70. The taxpayer's testimony is not corroborated by any employment records, written offers of employment, employment contracts or other similar documentation. Accordingly, the only documents of record regarding the taxpayer's employment are the previously identified documents pertaining to the employment he accepted. As previously noted, this employment was for a limited rather than indefinite period.

The taxpayer's testimony alone is insufficient to rebut the Department's *prima facie* case. Mel-Park Drugs, *supra*. Moreover, the weight and credibility of the taxpayer's testimony concerning his expectation of continued employment in Anywhere or with some other company in the Middle East must be evaluated in light of the fact that the taxpayer had a contract for a specified duration which was not extended, and the fact that the taxpayer received no new offers of employment after his contract for employment in Anywhere terminated. Thus, even though the taxpayer might have expected that either his employment in Anywhere would be renewed or that he would have no difficulty finding employment in some other Middle Eastern country, the plain text of employment related documents contained in the record gave him an even more

express expectation that his employment might well end no later than 48 weeks after it commenced. Department Ex. 5. In other words, even though the taxpayer testified that he hoped that his employment in the Middle East would last longer than the period set forth in his employment related documents discussed above, the employment related documents themselves provide better evidence that taxpayer's employment in this region would not last indefinitely or permanently.

Taking into account all the evidence, I conclude that taxpayer has not shown that the taxpayer's absence from Illinois was for other than a temporary or transitory purpose during 2008. The evidence shows, instead, that the taxpayer's employment and business activities in Anywhere were anticipated to be for a limited period of time not to exceed approximately one year and thus only temporary or transitory. Consequently, I find that the taxpayer has not rebutted the Department's *prima facie* correct determination that the taxpayer was not absent from Illinois while in Anywhere during 2008 for other than a temporary or transitory purpose. 35 **ILCS** 1501(a)(20); 86 Ill. Admin. Code section 3020(c).

CONCLUSION

The taxpayer contends that he is entitled to be taxed either as a non-resident or part-year resident of Illinois for the tax year ended 12/31/08. The taxpayer cites, in support of this claim, 35 **ILCS** 5/1501(17)(defining "part year resident"), 35 **ILCS** 5/301(b), and both 35 **ILCS** 5/302(a) and 35 **ILCS** 5/304(a) which concern the allocation and apportionment of compensation income to Illinois by part year residents and non-residents. Tr. I p. 12; Tr. p. 75. However, for the reasons enumerated above, I find that the taxpayer was a resident of Illinois rather than a part year resident or non-resident of this state during the tax years in controversy. Consequently, the

allocation and apportionment provisions cited by the taxpayer as a basis for relief are inapplicable.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notices of Deficiency at issue in this case be affirmed in their entirety.

Ted Sherrod
Administrative Law Judge

Date: February 4, 2014