

IT 95-21

Tax Type: INCOME TAX

Issue: Income Earned In Illinois/Individual Residency

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )
OF THE STATE OF ILLINOIS      )
                                )   Docket No.:
v.                               )   FEIN or SSN:
                                )
XXXXXX,                          )   Harve D. Tucker,
Taxpayers                        )   Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This is a case involving XXXXX. On June 16, 1994, the Department of Revenue issued a Notice of Deficiency for the tax year ending December 31, 1991, in the amount of \$2,511, inclusive of tax, penalties and interest to the date of issuance. The basis of the tax is the Taxpayers' failure to file an Illinois income tax return. By their protest dated July 6, 1994, the Taxpayers assert that they were not required to make estimated payments, file a tax return or pay any tax the State of Illinois.

On consideration of the matters, it is recommended that they be resolved in favor of the Department of Revenue, with adjustments to the deficiency.

FINDINGS OF FACT:

1. The Taxpayers were on active duty with the U.S. Army during all of 1991, residing in Offenbach am Main, Germany.
2. XXXXX used her parents' address in Illinois for the collection and forwarding of personal mail, the filing of a joint U.S. income tax return, and to have a U.S. address so she could vote in national elections.
3. XXXXX maintained a bank account in Illinois for deposit of her Army paycheck. The Taxpayers earned other income in the form of interest,

dividends and capital gains.

4. XXXXX, also on active duty with the U.S. Army, was a resident of Texas when he married XXXXX in 1989. He never visited Illinois until 1992, and has never been in Illinois more than six days.

CONCLUSIONS OF LAW: 35 ILCS 5/201(a) imposes a tax measured by net income on every individual on the privilege of earning or receiving income in or as a resident of Illinois.

35 ILCS 5/202 defines net income as that portion of base income allocable to Illinois under the provisions of Article 3.

35 ILCS 5/301(a), requires that all income and deductions which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to Illinois. These sections present two issues relevant to the case herein - what is base income and who is a resident.

Resident is defined in 35 ILCS 5/1501(a)(20) 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(.)

The regulations further provide in the case of military personnel that members of the U.S. Armed Services . . . will not cease to be domiciled in Illinois solely by reason of their assignment to duty in other states for long periods;

86 Admin. Code ch. I, Sec.100.3020(h)

Publication 102, referred to in and a basis of the Taxpayers' protest, states a "12-month" rule:

If, as an Illinois resident, you

ù have been stationed outside Illinois for the entire taxable year, and

ù do not earn income subject to Illinois tax, you may choose to be considered a nonresident for Illinois tax purposes, and you are not required to file an Illinois return.

As the Taxpayers earned income from Illinois sources that was subject to Illinois income tax, the Taxpayers were not within this exception.<sup>1</sup>

35 ILCS 5/203(a)(1) and (a)(2)(E) define base income as the Taxpayer's federal adjusted gross income for the taxable year, deducting compensation paid to a resident by reason of being on active duty in the Armed Forces of the United States. As such, the Taxpayers' military pay of \$40,365 is deductible from base income.

The Notice of Deficiency is sustained, with the modification hereinbefore described. A copy of the Auditor's Report, Form EDA-24, is attached to and a part of this recommendation.

Harve D. Tucker  
Administrative Law Judge

Date

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1 If Taxpayers file a joint federal return but do not have the same residency status, they may choose to file either jointly as residents or separately. Once an Illinois joint return has been filed, filing status may not be changed on an amended return. See Publication 102, situations 4 and 5.