Illinois Residency For Illinois Income Tax Purposes
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Definition of Resident

- Under Illinois Income Tax Act Section 1501(a)(20):
  - In IL for other than temporary or transitory purpose during taxable year;
  - Domiciled in IL but absent for temporary or transitory purpose during taxable year
  - Estate of decedent domiciled in IL at death
  - Trust created by will of decedent domiciled in IL at death
  - Irrevocable trust, the grantor domiciled in IL at time trust became irrevocable

Tax Consequences of Being a Resident

- A resident is subject to tax on his/her entire net income, regardless of whether that income is derived from sources within or without Illinois

Definition of Domicile

- Domicile:
  - Place where individual has true, fixed, permanent home and principal establishment
  - Where individual intends to return whenever absent
  - Present intention of making place a permanent home until some unexpected event occurs to induce him to adopt another permanent home
  - Can only have one domicile at a time

Definition of Domicile

- Domicile Lost -
  - Locating elsewhere with the intention of establishing the new location as his or her domicile; or
  - Abandoning any intention of returning to Illinois

Detailed Examples of Temporary or Transitory Presence in Illinois

- 1st Example:
  - X has been domiciled in Fairbanks, Alaska for last 50 years and accumulated a large fortune
  - X moves to IL for medical reasons but maintains home in Alaska
  - X now spends entire time in IL except summer trips of 3 or 4 months each year
  - X maintains an abode in IL
  - IL Resident because his yearly sojourn in Illinois is not temporary or transitory

Detailed Examples of Temporary or Transitory Presence in Illinois

- 2nd Example:
  - Until summer of 1969, Y domiciled in IL;
  - Y had a summer home in Nevada;
  - Y declared himself to be domiciled in Nevada to avoid IL income tax;
  - Y moved bank accounts to Nevada and spent 3 or 4 months a year there;
  - Y spent majority of other months in IL where he kept his estate, and continued to maintain his social and business connections;
  - The months not spent in IL or Nevada were spent traveling in other states
  - Y is a resident of IL and is taxable on his entire next income, for his sojourns in IL are not for temporary or transitory purposes

Detailed Examples of Temporary or Transitory Presence in Illinois

- 3rd Example:
  - B and C husband and wife domiciled in MN where they maintain family home;
  - Spent each November thru March in IL
  - Originally rented an apartment in IL but 3 years ago purchased a house in IL
  - Rent out IL house from March thru November
  - B retired from active control of his MN business but still maintains an office in MN and nominal authority
  - B belongs to clubs in MN but non in IL
  - B has no business interests
  - C has little social life in IL, more in MN and no relatives in IL
  - Neither B nor C is a resident of Il as presence is for temporary or transitory purposes

Old Presumptions of Residency/Non-Residency (Prior to 2013)

- Over nine months in IL during the calendar year
- Absent for more than one year or more
- Presumptions not conclusive, may be overcome by satisfactory evidence to the contrary… determined on a case by case basis
- If presumed resident, should file tax return
  - This enables taxpayer to avoid possible imposition of penalties for failure to file tax return should it later be determined that taxpayer was a resident

Current Presumptions of Residency/Non-Residency (2013 forward)

- An individual receiving a homestead exemption for IL property is presumed to be a resident of IL
- An individual who is an IL resident in one year is presumed to be a resident in the following year if he or she is presented in IL more days than he or she is present in any other state

Proof of Non-Residency

- The regulations list the following as evidence an individual may submit to prove he/she is a resident of another state but will depend largely on the circumstances of each particular case *(86 Ill. Adm. Code § 100.3020(g)(1)):*
  - *Affidavits and evidence of location of spouse of dependents*
  - Voter registration
  - Driver's license or 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

Cain v. Hamer – IL App Crt 2012

- Factors regarding intent are considered controlling
- Former IL residents
- Maintained longtime IL home
- Spent about same time in IL and FL each yr.
- Much Stronger connections to FL
- Spend annually more money in FL

Corbin v IDOR, IL Tax Tribunal 2015

- FL residents from Jan 1, 2001 thru April 30, 2001
- Previously IL Residents
- IDOR asserted that Corbins became IL residents as of May 1, 2001 – Part Year Resident
- To effect a change in residency, the facts must show that petitioners simultaneously abandoned FL and establishing an IL presence more than temporary or transitory
- IDOR did not provide facts to support that Corbins established an IL residency as of May 1, 2001.

Dods v. Hamer (Illinois Appellate Court 2010)

- Facts:
  - In September 1989, Mr. Dods started a business called Racing Champions, which later changed its name to RC2 Corporation
  - In January 2002, Mr. Dods retired as CEO of RC2 Corporation
  - On January 1, 2002, Mr. and Mrs. Dods changed their domicile to Florida
  - In 2006, the Illinois Department of Revenue began a pilot program to identify high-income residents who were allegedly attempting to avoid paying Illinois income tax
  - The Dods challenged the deficiency notice in court

Dods v. Hamer (Illinois Appellate Court 2010)

- Conclusion: Mr. and Mrs. Dods are not Illinois residents
- Analysis:
  - Mr. Dods retired as CEO of RC2 in 2002
  - Mr. Dods' employment agreement provided, "The Employee may become a resident of the State of Florida during the term of this agreement. If this occurs, the Company recognizes that the Employee's duties can be performed from a Florida office and that the Employee would be residing in Florida and not Illinois."
  - Mr. and Mrs. Dods owned a Florida home since 1997 and from 2002 through 2004 Mrs. Dods spent the majority of her time in Florida
  - From 2002 through 2004, Mr. Dods spent an average of 51% of his time in Florida, 28% of his time in Illinois, and the remaining time split between Michigan and other places

Analysis continued:

- They typically spent September through May in Florida each year
- They also obtained Florida drivers licenses and registered to vote and did vote in Florida
- They developed a network of health care providers in Florida, became active members of a local church, and participated in charity events
- They provided a list of credit card charges and a list of checks indicating an active presence in Florida during 2002 through 2004
- Mr. and Mrs. Dods also filed a Florida Intangible Property Tax Return, which only Florida residents must file

Dods v. Hamer (IL App Court 2010)

- Significance of the ruling:
  - You do not have to sever all ties with Illinois to claim residency status elsewhere
  - Illinois Department of Revenue did not appeal

Illinois Residency Standard – What Is Needed?

- It Depends
- Facts and Circumstances
- Taxpayer Specific
- Taxpayer Intent

Residency Issues for Trusts

Linn v. Illinois Dept. of Revenue

- Facts
  - 1961: Irrevocable Trust ("1961 Trust") established between a resident of IL (Grantor) and an unrelated resident of IL (Beneficiary).
  - Current trustees of the 1961 Trust are 2 residents of IL and 1 resident of MN.
  - 2002: Current trustees transferred assets into a new Autonomy Trust ("Autonomy Trust"), designating the plaintiff as trustee. The Autonomy Trust has the same terms and beneficiaries.

Linn v. Illinois Dept. of Revenue

- 2004, 2005: Trustee asked for and received a reformation grant that the Autonomy Trust would be regulated under the laws of Texas.
- Plaintiff is a resident of Texas and conducts all duties from his Houston office.
- Current Beneficiary is a resident of Montana
- Contingent remaindermen, children of Beneficiary, are residents of New York, California and Washington D.C.
- Protector of Trust is not an Illinois Resident

Linn v. Illinois Dept. of Revenue

- No assets are held in Illinois
- No income was earned in Illinois except $4.23 of interest paid by the State of Illinois in a prior year’s tax overpayment. This is not attributable to voluntary activity of the Autonomy Trust and is not derived from investment in Illinois.

Linn v. Illinois Dept. of Revenue

- "Resident" as it relates to Trusts is defined as:
  - A Trust created by will of decedent domiciled in Illinois at the time of death.
  - Any irrevocable trust, the grantor of which was domiciled in the State of Illinois at the time the trust became irrevocable.
    - Illinois Income Tax Act Section 1501(a)(20)(D).

Linn v. Illinois Dept. of Revenue

- Arguments:
  - Violation of Due Process, Commerce and Equal Protection Clauses of the U.S. Constitution
  - Violation of Due Process, Uniformity and Equal Protection Clauses of the Illinois Constitution

Linn v. Illinois Dept. of Revenue

- Due Process
  - No connection between IL and the Autonomy Trust to satisfy the minimum contacts requirement of Due Process Clause
  - Autonomy Trust has only fallen within the category of "resident" because the grantor of the predecessor trust was domiciled in IL at the time 1961 Trust became irrevocable.
  - Act Section 1501(a)(20)(D) permanently classifies every inter vivos trust as an IL resident and taxes in perpetuity based on a one-time event.

Linn v. Illinois Dept. of Revenue

- Commerce Clause
  - Summary:
    - Classification of the Autonomy Trust as a “resident” violates Commerce Clause because:
      - It taxes activity that has no substantial nexus to Illinois
      - It is not fairly apportioned to activities carried on by the Autonomy Trust in Illinois
      - It discriminates against and burdens interstate commerce
      - It is not fairly related to any services provided by Illinois.

Linn v. Illinois Dept. of Revenue

- Illinois Uniformity Clause
  - The Act unreasonably includes the Autonomy Trust and other trusts in the definition of “resident” and unreasonably excludes the trusts from the definition of “nonresident” and imposes an unapportioned tax
  - The Act includes within the definition of “nonresident” non-natural entities that are organized or incorporated in IL but unreasonably excludes inter vivos trust that is considered a “resident” solely because the grantor is domiciled in IL at the time the trust becomes irrevocable.

Linn v. Illinois Dept. of Revenue

- Equal Protection Clause
  - Both the United States and Illinois constitutions afford equal protection of the laws to any person.
- An Inter Vivos trust that becomes irrevocable when the grantor is domiciled in IL is in perpetuity denied the ability to determine its Illinois Income tax obligation and liability unlike every other person that is a “taxpayer” under the Act.

Linn v. Illinois Dept. of Revenue

- Equal Protection Cont.
  - Forever fixing the trust's status as an IL resident is not rationally related to a legitimate state purpose.
  - There is no rational relation to a legitimate purpose of the Act to include the definition of "resident" an inter vivos trust solely on the basis that its grantor is domiciled in IL when the trust becomes irrevocable.
  - There is no rational relation to require an inter vivos trust to determine its tax obligations without reference to its own contacts with the State of IL in the year in which the tax is imposed while all other persons are able to determine their contacts with the state.

SB 1515 – P. A. 101-585 - Foreign Tax Credit for Individuals

- Effective for tax years ending on or after 12/31/20
- Provides that non-residents who work in Illinois for more than 30 days in a year are subject to Illinois income tax withholding
- Illinois employees working out of state will be entitled to credit for taxes paid to the other state
- Employers are not required to track the location of employees – employers may rely on the employee's information about work in other states

COVID NEXUS ISSUES

- Employees working from an out of state location for an IL based company
- Employees working in IL for an out of state company that otherwise has no IL presence
- Other situations

Questions

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