

**Letter of Findings: 01-20150281
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was required to file 2011 Indiana individual income tax return because she was an Indiana resident and received 1099 income which was subject to Indiana income tax.

ISSUE

I. Indiana Individual Income Tax - Imposition.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayer is an individual, who did not file a 2011 Indiana individual income tax return. Based on the best information available, the Indiana Department of Revenue ("Department") determined that, for the 2011 tax year, Taxpayer received 1099 income, which was subject to Indiana income tax, that Taxpayer was resident, and that Taxpayer did not file her Indiana income tax return and pay the income tax that was due. The Department thus assessed Taxpayer income tax, interest, and penalty based on the best information available to the Department.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Imposition.

DISCUSSION

The Department determined that Taxpayer is an Indiana resident who received 1099 income but did not file her 2011 Indiana income tax return and pay the tax due. The Department thus assessed Taxpayer Indiana income tax, penalty, and interest.

Taxpayer contended that prior to 2014 she spent more than two decades overseas on missionary work. Thus, Taxpayer stated that she did not owe any Indiana income tax for the tax year 2011 because she was overseas and was not an Indiana resident. Taxpayer stated that she purchased a house in Indiana in 2014 after she retired and returned to Indiana.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong.

Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). The issue is whether Taxpayer meets the burden of proof demonstrating that the Department's proposed assessment was incorrect.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

In *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefit of his wife's health. Indiana assessed Mr. Walton tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton owned and managed a company and stores in Michigan; that Mr. Walton maintained his membership with lodges, clubs, and a church in Sturgis, Michigan; that Mr. Walton on various occasions exercised his civil and political rights in Sturgis, Michigan; and that Sturgis, Michigan was used in Mr. Walton's legal documents, including policies of insurance, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case . . .

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.** Id. at 277-78.

(Internal citations omitted). (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1317-18 (Ind. 1988).

(Internal citations omitted). (**Emphasis added**).

During the protest process, in addition to two copies of her identification cards, Taxpayer offered additional documentation, including copies of Taxpayer's 2011 federal income tax return, the documents regarding her purchase of an Indiana house in 2014, her passport, a letter from her employer, as well as photos, floor plan, and an estimate of material costs of her house overseas to support her protest. Taxpayer stated that she "had a residence in Indiana until 1990 when she entered her missionary work." Taxpayer explained that she sold that house then and, as a result, all her mail, including 1099 forms, was sent to her relative's address in Indiana. Taxpayer stated that her relative acted as her power of attorney while she worked overseas.

Taxpayer also explained that, she visited her relatives in Indiana occasionally during those years when she returned in order to comply with the "required 'sabbatical' " in that foreign jurisdiction. When she returned to the United States, she stayed with her relatives in Indiana. Taxpayer stated that she maintained her Indiana driver's license so she would be permitted to drive vehicles owned by her relatives while she was in Indiana visiting.

Taxpayer also stated that she registered to vote in Indiana but she did not vote for those years.

Additionally, Taxpayer claimed that she did not own or rent any property in Indiana prior to 2014 and after she sold her house in 1990s; rather, she had a home built overseas. Taxpayer stated that the house was eventually owned by the employer. Taxpayer further asserted that she "did not have a domicile in the State of Indiana during 2011 and . . . effectively establish a new domicile, not only outside the State of Indiana, but outside the United States of America for concurrent periods spanning from circa 1990 until mid-2014."

Upon review, however, the Department is not able to agree. Specifically, first, copies of Taxpayer's identification cards at best demonstrated that Taxpayer is a U.S. citizen and has been employed by a non-for-profit organization overseas. But, the information was not sufficient to verify which year Taxpayer started working, duration of her work overseas, or where Taxpayer resided. Similar to Mr. Walton in *Croop v. Walton*, Taxpayer sold her Indiana house in 1990. But selling her house and working overseas were not sufficient to establish that she effectively abandoned her Indiana domicile. Specifically, Taxpayer maintained her Indiana driver's license. When she was required to leave the foreign country and returned to the United States, Taxpayer visited and stayed with her relatives in Indiana. Taxpayer registered to vote in Indiana and Taxpayer filed her 2011 federal income tax return, which contained an Indiana address as her mailing address.

Taxpayer's documentation did not show that she established a new domicile overseas either. Taxpayer is a United State citizen, who was granted a visa under certain terms and conditions to stay and work in another country. Periodically, Taxpayer was required to leave that country to comply with the regulatory requirements in that foreign jurisdiction. That is, Taxpayer was required to periodically leave and re-enter that country after she obtained reissuance or renewal of her visa. Taxpayer thus regularly returned to the United States waiting for the completion of the required paperwork. Taxpayer eventually returned to Indiana after she retired. Taxpayer purchased a house in Indiana, where she now resides, and claimed the Indiana homestead exemption in 2014. Thus, based on the information above, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer had abandoned her Indiana domicile.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317. Additionally, "[a] person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence." *Id.* Thus, given the totality of the circumstances, the Department is not able to agree that Taxpayer effectively and legally changed her domicile. Taxpayer was Indiana resident for the tax year 2011 because her domicile remained in Indiana.

FINDING

Taxpayer's protest is respectfully denied.

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