

Letter of Findings: 01-20150365
Individual Income Tax
For the Year 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 is still required to file a 2012 Indiana income tax return because the documentation provided by Individual was not sufficient to establish that she abandoned her Indiana domicile.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-8.1-5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#).

Taxpayer argues that she was not an Indiana resident during 2012 and was not required to file an Indiana income tax return for that year.

STATEMENT OF FACTS

Taxpayer is a current Indiana resident. The Indiana Department of Revenue ("Department") sent Taxpayer a letter stating, that Taxpayer appeared to have failed to file her 2012 Indiana Income tax return. The Department requested that Taxpayer provide a 2012 Indiana individual income tax return. Taxpayer responded in a letter dated June 17, 2015 noting her belief that the Department "is in error in the interpretation of [her] past taxable status with respect to the State of Indiana."

The Department issued a Proposed Assessment in July 2015. Taxpayer filed a protest regarding this matter in July 2015. An administrative hearing was held during which Taxpayer explained the basis for her protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayer was domiciled in Indiana in 2012 and was therefore required to file an Indiana income tax return. The Department determined that Taxpayer was either domiciled in Indiana or was a resident of Indiana because Taxpayer continued to renew her Indiana driver's license and her W-2 and 1099s listed an Indiana payee.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position 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). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dep't. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

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 taxpayer's 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 taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For income tax purposes, "The term '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](#). A "nonresident" is "any person who is not a resident of Indiana." IC § 6-3-1-13. An individual who files a federal income tax return as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state" [45 IAC 3.1-1-23](#)(3).

Domicile is defined by [45 IAC 3.1-1-22](#), which 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).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have an intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* At 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] 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.**"

'[D]omicile' . . . 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.**

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

In explaining the difference between "residence" and "domicile," the court in Croop stated:

'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." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

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.**

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

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

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. *Yonkey v. State* (1866), 27 Ind. 236.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** *Id.* at 1317 - 1318 (Ind. 1988).

(Emphasis added).

In the instant case, Taxpayer indicates that for all of 2012 she lived and worked in France. Prior to living in France, Taxpayer lived in her parent's Indiana home with a brief absence to attend college in Illinois. Taxpayer moved to France to work as a missionary and indicates that she intended to remain an overseas missionary indefinitely. While Taxpayer did not maintain a home in Indiana, she continued to use her parent's Indiana address "to ease correspondence." According to Taxpayer she "paid rent and taxes overseas, had [her] furniture and belongings there . . . and had no intention of ever living in Indiana again." Taxpayer returned to Indiana for visits and to fundraise for her cause, and returned permanently to Indiana "because [she] fell in love with a resident of Indiana[.]" who she married in 2014.

Taxpayer provided documentation to support her position. She supplied her 2012 French income tax return in which she listed her French address. Taxpayer also gave the Department a copy of her French driver's license, which has an effective date of 2008. Taxpayer explains that within her first year of living in France she exchanged her Illinois driver's license for a French one. Her French driver's license was her only driver's license from 2007 to 2014. She did, however, maintain an Indiana identification card to use when visiting the United States.

Taxpayer also provided her Registration and Absentee Voter Ballot Request, showing that she requested to vote in the United States as "A U.S. Citizen residing outside the U.S. indefinitely." She provided an Indiana address as her "Voting Residence Address" on the same Form. It is not clear, however, whether taxpayer voted in any United States federal or state elections in 2012.

Upon review of the documentation, the Department is unable to agree that Taxpayer was domiciled outside of Indiana in tax year 2012. Taxpayer has at best established that she is a U.S. citizen who was employed by a not-for-profit organization overseas. Her actions were not sufficient to establish that she effectively abandoned her Indiana domicile, as explained by Croop and Bayh. Taxpayer maintained an Indiana identification which she used when she returned to the United States. She also used an Indiana address for correspondence and registered to vote using an Indiana address.

Taxpayer's documentation was also not sufficient to show that she established a new domicile overseas. Taxpayer is a United States citizen who worked in another country. Periodically, Taxpayer returned to Indiana to fundraise. Taxpayer eventually returned to Indiana, got married in Indiana and currently resides in this state. Taxpayer continues to travel overseas for long periods of time for work, but her domicile is here.

Based on the information above, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer abandoned her Indiana domicile, as defined by [45 IAC 3.1-1-22](#). Taxpayer was an Indiana resident for the tax year 2012 as her domicile remained in Indiana. Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

Posted: 06/29/2016 by Legislative Services Agency
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