

**Letter of Findings: 01-20150569
Indiana Individual Income Tax
For The Tax Year 2011 and 2012**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 provided enough documentation to establish that he was not an Indiana resident for 2011 and 2012. Therefore, Individual was not subject to Indiana Income Tax.

ISSUES

I. Indiana Individual Income Tax - Residency.

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 § 6-3.1-20-1; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); 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); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the Department's proposed assessment for 2011 and 2012.

II. Tax Administration - Non-Filer Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayer protests the imposition of the penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual currently living in Ohio. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax years 2011 and 2012 and that Taxpayer failed to file 2011 and 2012 Indiana income tax returns. The Department therefore, issued a proposed assessments for 2011 and 2012 income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for tax years 2011 and 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 and 2012 tax years on the ground that Taxpayer was domiciled in Indiana or was an Indiana resident in 2011 and 2012 and that he failed to file his 2011 and 2012 Indiana income tax returns. The Department based its assessment on the fact that Taxpayer maintained an Indiana driver's license, renewed vehicle registration, was registered Indiana voter, and tax documents with Taxpayer's Indiana address as the payee address. The issue is whether, for tax years 2011 and 2012, Taxpayer was an Indiana resident or was domiciled in Indiana and was therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; 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, Taxpayer is required to

provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

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. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what their Indiana income tax would be 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).

For guidance in determining a taxpayer's domicile, the Department refers to *Croop v. Walton*, 157 N.E. 275 (Ind. 1927). In *Croop* 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 benefits of his wife's health. Indiana assessed Mr. Walton state income 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; maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, 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**).

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 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.

In this instance, Taxpayer explained that in 2003 he and his family moved to Mexico for work from Indiana. He stated that his employer only had four offices globally (Indiana is not one of the locations). Taxpayer also explained that prior to his move he made one of his relatives in Indiana his power of attorney. This allowed the relative to file his taxes, receive mail, and engage in other business if necessary while he was abroad. He explained that he needed a power of attorney because it is was difficult to receive mail, especially tax information, from outside Mexico to his location there.

In 2013, Taxpayer and his family returned to the United States to reside in Ohio, where he still resides. Taxpayer documented his move to Ohio with tax documents with Taxpayer's Ohio payee address, Mortgage application for the purchase of his Ohio home, mover quote, home owner's insurance policy for his Ohio home, Ohio vehicle registration, and Ohio driver's license.

During the protest process, Taxpayer submitted additional documentation to support the assertion that he was not

an Indiana resident and did not owe any Indiana income tax for the tax years 2011 and 2012. The documents included Taxpayer's visa and temporary resident card for Mexico, school absentee reports for his children, and evidence he participated in Mexico's social security plan. All of the factors weigh in favor of Taxpayer's argument that he was not domiciled in or a resident of Indiana during 2011 and 2012, as explained by Croop and Bayh.

Pursuant [45 IAC 3.1-1-22](#) Taxpayer has documented relevant facts that establish him new domicile out of state. Therefore, Taxpayer has 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 sustained.

II. Tax Administration - Non-Filer Penalty and Interest.

DISCUSSION

Taxpayer requests that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date"

In addition, Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Taxpayer established that he will not owe the proposed tax assessment, as discussed in Issue I. Taxpayer has been sustained on his protest of the imposition of assessed income tax, therefore, the issue of penalty and interest assessed is moot.

FINDING

Taxpayer's protest of the negligence penalty and interest is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2011 and 2012 tax years is sustained. Taxpayer's protest of the negligence penalty and interest is moot since Taxpayer does not owe any of the proposed assessment.

Posted: 06/29/2016 by Legislative Services Agency
An [html](#) version of this document.