DEPARTMENT OF STATE REVENUE

01-20160031.LOF

Letter of Findings: 01-20160031
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 maintained a Homestead Exemption Credit on property owned in Indiana and collected rental income from said property. As such, Individual was domiciled in Indiana in 2012 and was required to file an Indiana individual income tax return.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-12; IC § 6-8.1-5-1; IC § 6-3-1-3.5; IC § 6-1.1-12-37; 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 3.1-1-22.

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 who lived in Texas from 2007 to 2013. For the tax year 2012, however, Taxpayer had investment accounts with an Indiana address. Therefore, in a letter dated July 17, 2015, the Indiana Department of Revenue ("Department") notified Taxpayer that "[b]ased on information reported to the [Department], we have determined that you have unreported income for tax year 2012." As such, the Department requested that Taxpayer either provide a 2012 Indiana individual income tax return or send a letter explaining why she is not required to file a 2012 Indiana individual income tax return.

Taxpayer responded in a letter dated August 15, 2015 stating that she "was a resident of . . . Texas for the full 2012 year and . . . filed [her] taxes based on [her] residence and employment status in Texas." In October 2015, the Department issued a proposed assessment of individual income tax for 2012 and again requested that Taxpayer provide a 2012 Indiana income tax return because she also "took the Indiana Homestead Exemption Credit on [Indiana property] in 2012 . . . ." Taxpayer filed a protest regarding this matter in November 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 Department assessed Taxpayer Indiana income tax for 2012 because Taxpayer did not timely file her Indiana individual income tax return by the due date. Taxpayer argued that she was not required to file an Indiana income tax return in 2012 because she lived and worked in Texas for that entire year.

The issue is whether Taxpayer was required to file an Indiana income tax return for tax year 2012. Information available to the Department created a rebuttable presumption that Taxpayer was a resident of Indiana in 2012. Further, Taxpayer claimed a Homestead Exemption Credit on her Indiana property in 2012.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we 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).

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

Indiana imposes an income tax on "that part of the adjusted gross income derived from sources within Indiana of every nonresident person . . . ." IC § 6-3-2-1(a).

> With regard to . . . nonresident persons, "adjusted gross income derived from sources within Indiana" . . . shall mean and include:
> (1) income from real or tangible personal property located in this state;
> (2) income from doing business in this state;
> (3) income from a trade or profession conducted in this state;
> (4) compensation for labor or services rendered within this state; and
> (5) income from . . . intangible personal property to the extent that the income is apportioned to Indiana . . .
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> IC § 6-3-2-2(a).

Indiana also imposes an income tax on "the adjusted gross income of every resident person . . . ." IC § 6-3-2-1(a). 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.

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.**
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> **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.**
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> 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:
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> (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 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**."
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> "[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**.
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> Id. at 277. (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."
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> **"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."**
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> 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**.
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> Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

Subsequently, in State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, 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**."
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> 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**.
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> Id. at 1317 -18 (Ind. 1988). (**Emphasis added**).

Accordingly, even when a taxpayer moves from Indiana for years, the taxpayer is presumed to be an Indiana resident if the taxpayer is domiciled in Indiana and has no intention to abandon his or her Indiana domicile. The taxpayer may rebut that presumption.

In this instance, Taxpayer indicates that for all of 2012 she was a resident of and worked in Texas. Taxpayer moved to Texas for work in 2007 and indicates that she intended to remain there indefinitely. While in Texas, Taxpayer returned to Indiana frequently to visit family and ultimately returned to Indiana in 2013 to care for an ailing family member.

Taxpayer provided documentation to support her position that she was living in Texas in 2012. Taxpayer purchased a home in Texas for which she provided a 2012 mortgage interest statement from her mortgage holder. Taxpayer provided her 2012 Form W-2 which listed her Texas address. She also provided a copy of her 2012 Federal income tax return in which she listed her Texas address as her home address. Texas does not have a state income tax, therefore she did not file a state income tax return in 2012. Taxpayer also provided her Texas driver's license, issued in October of 2011. Information available to the Departments indicates that Taxpayer registered a car in Texas and that Taxpayer was registered to vote in Texas in 2012.

However, while living in Texas, Taxpayer maintained her home in Indiana claiming that, due to market conditions, it was unlikely that she would be able to sell the home. Instead, Taxpayer rented her Indiana home and continued to claim a Homestead Exemption Credit on the home. Taxpayer provided a copy of a letter dated April 12, 2012, in which she notified her Indiana county treasurer of her change in primary address and requested to have the Homestead Exemption Credit removed from her Indiana property. It is unclear, however, if this letter was ever mailed. Verifiable information, on the other hand, showed that Taxpayer's Homestead Exemption Credit was never removed from the property and that no requests for removal were ever received. Under Indiana law, a "homestead" is a taxpayer's "principal place of residence" located in Indiana and owned by Taxpayer. IC § 6-1.1-12-37(a)(2). Homesteads are eligible annually for a "standard deduction from the assessed value of the homestead for an assessment date," i.e., the Homestead Exemption Credit. IC § 6-1.1-12-37(b). To claim a Homestead Exemption Credit, taxpayers must fill out a Form HC10 and submit it to the state. This form includes a "Certification Statement" which taxpayers sign and date, certifying that Indiana is their principal place of residence. Without removal or repayment of the Homestead Exemption Credit, the Department cannot agree that a taxpayer's principal place of residence has changed, especially in light of Taxpayer's return to Indiana in 2013. Together, these factors suggest Taxpayer retained her domicile in Indiana. Further, rental income earned in Indiana is Indiana-sourced income under IC § 6-3-2-2(a). Though Taxpayer rented her Indiana home while living in Texas, she never reported that rental income to Indiana.

Upon review of the documentation, the Department cannot agree that Taxpayer was domiciled outside of Indiana in tax year 2012. Despite Taxpayer's actions in Texas, she maintained her Homestead Exemption Credit in Indiana and earned income in Indiana, which she failed to report. As such, Taxpayer must file an Indiana individual income tax return for 2012 and any year in which she was living in Texas.

FINDING

Taxpayer's protest is respectfully denied.

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An html version of this document.