

**Supplemental Letter of Findings: 01-20150079
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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 Supplemental Letter of Findings.

HOLDING

Husband and Wife were required to file a 2011 Indiana individual income tax return because they were Indiana residents.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37; 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; [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); 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).

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) are individuals, who own more than one residence in Indiana and outside of Indiana. Publicly verifiable information showed that Taxpayers claimed the "homestead" deduction (or exemption) on their Indiana home pursuant to Indiana law. Taxpayers did not file their Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayers were Indiana residents, that Taxpayers failed to file their Indiana income tax return, and that Indiana income tax was due for the 2011 tax year.

Taxpayers timely protested the assessment. An administrative phone hearing was held. The Department issued Letter of Findings 01-20150079 ("LOF") which determined that Taxpayers were Indiana residents and were required to file their Indiana income tax return for the tax year 2011 because no supporting documentation was submitted. Taxpayers disagreed and requested a rehearing. A rehearing was granted and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The LOF determined that Taxpayers were domiciled in Indiana and were required to file their 2011 Indiana income tax return, and that Indiana income tax was due for the 2011 tax year. Taxpayers, to the contrary, claimed that they were not required to file their 2011 Indiana income tax return and they did not owe any Indiana income tax because they were not Indiana residents. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and therefore were 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; 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).

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 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).

Indiana law further defines "[h]omestead" as "an individual's principal place of residence . . . that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). A taxpayer is entitled to claim a deduction, known as homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when individuals move to a new place. Rather, the individuals must move to the new place and have intent to remain there indefinitely.

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, the taxpayer, Mr. Walton, 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 places 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." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (Ind. 1988) (**Emphasis added**).

In this instance, Taxpayers claimed in relevant part that:

[Taxpayers] purchased their first home in the state other than Indiana in 1986. . . . During their tenure at this address [Taxpayers] purchased their [Indiana residence]. The [Indiana] home was built in 1991 as a getaway for the couple from the busy city life of Chicago. The home remains that for the couple to this day. . . . At no time was it [Taxpayers'] intention for the [Indiana residence] to be anything more than a getaway location.

Wife was born in [the state other than Indiana] . . . and has always lived in [that] state. . . . Since moving to [that state] for a job and meeting [Wife], [Husband] has considered his home [that state] where his wife,

profession and companies were established and maintained. . . .

To support their protest, in addition to copies of their 2011 federal return and non-Indiana state income return, Taxpayers offered a copy of Wife's U.S. passport (photo page) to show that Wife was born in a state other than Indiana. Taxpayers also provided websites' printouts, including a non-Indiana university and a non-Indiana company, to verify that Husband worked as a professor of that university and was a Chief Scientific Officer of that company for the tax year at issue. Additionally, Taxpayers submitted an excerpt of their property insurance balance due and a letter notifying Taxpayers of the HOA fees for their residence in the state other than Indiana.

Upon review, however, the Department is not able to agree that Taxpayers were not Indiana residents. As mentioned earlier, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." [45 IAC 3.1-1-22](#). Regardless of Wife's birthplace and Husband's workplace, publicly available information showed that Taxpayers purchased and claimed "homestead" on their Indiana home pursuant to the Indiana law and benefited from a much reduced Indiana property tax obligation.

Taxpayers asserted that "[i]t was clearly administrative oversight that [Taxpayers] took the homestead exemption in Indiana. [Taxpayers have] attempted to rectify the issue and should no longer be claiming the credit going forward." However, no documentation was offered to support that assertion. Rather, publicly available information only reflects that Taxpayers notify the auditor of the county and remove their "homestead" exemption from their Indiana home for the tax year 2015 pay 2016 and going forward; Taxpayers took no action to address the issue regarding the tax year 2011. In addition, Husband maintained an Indiana driver's license and an Indiana license plate for his vehicles. Husband also obtained an Indiana "Carry Concealed Weapons Permit" during 2011. As Taxpayers stated, they spent weekdays outside of Indiana for the reason of Husband's employment; they always returned to their Indiana residence afterwards. Thus, given the totality of the circumstances, the Department must conclude that Taxpayers were domiciled in Indiana and were Indiana residents for the tax year at issue.

Alternatively, Taxpayers stated that they did not spend more than 183 days in Indiana during the year at issue. Taxpayers however did not provide documentation to support their assertion. Since the Department finds that Taxpayers were domiciled in Indiana, in the absence of other supporting documentation, the issue of whether Taxpayers spent 183 days or more in Indiana is moot.

As mentioned earlier, Taxpayers are required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Given the totality of the circumstances, **in the absence of other supporting documentation**, the Department is not able to agree that Taxpayers met their burden.

FINDING

Taxpayers' protest is respectfully denied.

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