

**Letter of Findings: 01-20160179  
Indiana Individual Income Tax  
For the Tax Year 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 was not required to file a 2012 Indiana individual income tax return because she was not an Indiana resident.

### ISSUE

#### **I. Indiana Individual Income Tax - Residency - Domicile.**

**Authority:** IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 9-24-1-1.5; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975).

Taxpayer protests the Department's proposed assessment for the 2012 tax year.

### STATEMENT OF FACTS

Taxpayer is an individual who lived in Indiana until 2011. Taxpayer accepted a job and moved to Michigan in January 2012, but maintained her Indiana driver's license and vehicle registration until 2015. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2012, and that Taxpayer failed to file her 2012 Indiana income tax return. The Department, therefore, issued a proposed assessment for 2012 for income tax, penalty, and interest.

Taxpayer timely protested the proposed 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 2012. Additional facts will be provided as necessary.

#### **I. Indiana Individual Income Tax - Residency - Domicile.**

### DISCUSSION

The Department assessed Taxpayer income tax for the 2012 tax year on the grounds that Taxpayer was an Indiana resident and that she failed to file her 2012 Indiana income tax return. Specifically, the Department determined that Taxpayer was a resident based on her having an Indiana driver's license and Indiana vehicle registration in 2012, as well as record of an Indiana address. Taxpayer contends that she was not required to file a 2012 Indiana income tax return because she was not an Indiana resident. The issue is whether, for the tax year 2012, Taxpayer was an Indiana resident 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; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. 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 her challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939

N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Ind. 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." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon 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). 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.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "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." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile" –and thus residency–is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant 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.

*Id.* at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

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 1318 (Internal quotations and citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (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.

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. 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." *Id.*

During the protest process, Taxpayer submitted additional documentation to support her assertion that she was not an Indiana resident and did not owe any Indiana income tax for the tax year 2012. The documents included Taxpayer's:

- 2012 Federal and Michigan income tax returns listing her Michigan address;
- 2012 W-2 showing Taxpayer's Michigan address and withholdings paid to Michigan;
- current Michigan apartment lease with a beginning lease term of June 1, 2012;
- credit report showing a prior Michigan address beginning in January 2012;
- employment offer letter from Taxpayer's current Michigan employer dated December 2011, showing a start date of January 2012;
- October 2015 paystub showing Taxpayer's current Michigan address;
- June 2016 cell phone bill with Taxpayer's current Michigan address; and
- current Michigan driver's license.

Taxpayer also stated she did not own any real property in Indiana and that she lived with her parents at her Indiana address until January 2012. Records obtained by the Department show that her parents own the property, which was confirmed by Taxpayer at the hearing. With respect to Taxpayer's driver's license and vehicle registration, which were both issued by Indiana in 2012, Taxpayer stated that she maintained these out of convenience and has, since the date of her protest, surrendered her Indiana license and obtained both a Michigan driver's license and vehicle registration.

In this case, Taxpayer has provided credible documentation sufficient to establish her intent to abandon her Indiana domicile in 2012. Consideration of the factors outlined in [45 IAC 3.1-1-22](#) and the documentation provided by Taxpayer support a finding that Taxpayer abandoned her Indiana domicile in 2012 with the intent of making Michigan her new domicile; in January 2012 she accepted a job in Michigan, moved out of the Indiana home owned by her parents, and established a new residence in Michigan where she remains to this day. The possession of an Indiana driver's license is not conclusive of a finding of Indiana residency, as the Indiana Bureau of Motor Vehicles is authorized to issue driver's licenses to non-residents. IC § 9-24-1-1.5. Therefore, Taxpayer proved the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and she is not subject to Indiana income tax for the tax year 2012 because she was a nonresident.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

### **FINDING**

Taxpayer's protest is sustained.

*Posted: 08/31/2016 by Legislative Services Agency*  
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